

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

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SC SUPREME COURT

OCTAVIA MIDDLETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001080

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)

05-GS-40-7894, 7931, 7892,
7942, 7891, 7939, 7940,
7884, 7941, 7938, 7885

State of South Carolina)

vs.)

TRANSCRIPT OF RECORD
(Trial)

Octavia Middleton,)

Defendant.)

August 27, 28, 29, 30, 31, 2007
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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13	184	Two Shells	593	625
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COURT'S EXHIBITS

16	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>
17	1	Ballistics Report	141
18	2	Ballistics Report	141
19	3	Publicity	145

20

21

22

23

24

25

Monday, August 27, 2007

(WHEREUPON, State's Exhibit No. 1 is marked for identification.)

(WHEREUPON, State's Exhibit No. 2 is marked for identification.)

(WHEREUPON, State's Exhibit No. 3 is marked for identification.)

(WHEREUPON, State's Exhibit No. 4 is marked for identification.)

THE COURT: Ms. Campbell, call your case.

MS. CAMPBELL: May it please the Court. The State calls The State vs. Octavia Middleton on indictment 05-GS-40-7941 for assault and battery of a high and aggravated nature, 7938 for assault and battery of a high and aggravated nature; 7884, assault and battery of a high and aggravated nature; 7894, burglary in the first degree; 7942, burglary in the first degree, 05-GS-40-7939 for armed robbery, 05-7891 for armed robbery, 05-7892 for armed robbery, 05-7885 for armed robbery, 05-7931 for armed robbery, 05-7940 for assault with intent to kill, and 05-8121 for murder.

THE COURT: All right. I have also 2005-7934 for assault and battery with intent to kill.

MS. CAMPBELL: If I could look at the face of

1 that, Your Honor.

2 **THE COURT:** And I also have 2005-7936 with
3 attempted armed robbery in addition to those that
4 you've already called.

5 **MS. CAMPBELL:** Yes, Your Honor. These two, this
6 is a separate case, and we're not going forward on
7 this one.

8 **THE COURT:** Take those. All right. Is the
9 State ready to proceed?

10 **MS. CAMPBELL:** The State's ready, Your Honor.

11 **THE COURT:** Defense ready to proceed?

12 **MR. HISKER:** Yes, Your Honor.

13 **THE COURT:** Any matter of a pre-trial nature
14 need to be taken up before we draw the jury?

15 **MS. CAMPBELL:** Yes, Your Honor. There were some
16 statements in this case that were taken from the
17 defendant, and we would like to proceed on those at
18 this point.

19 **THE COURT:** Any objection?

20 **MR. HISKER:** No, Judge. Before we start I'd
21 like to move to sequester the witnesses.

22 **THE COURT:** For the purpose of this hearing?

23 **MR. HISKER:** Yes, sir. Just because of the
24 nature of all the officers involved, I just want to
25 make sure there's no coincidental tainting of one

1 officer's testimony from what they hear from the
2 others.

3 MS. CAMPBELL: Your Honor, all the officers --

4 THE COURT: How many statements do we have?

5 MS. CAMPBELL: There are two separate
6 statements, Your Honor. And all the officers have
7 summarized them. We've turned over all that
8 information to the defendant. We just don't feel
9 like sequestration would be necessary at this point.

10 THE COURT: You're not suggesting lay witnesses?

11 MR. HISKER: No. Not at this time. No, Your
12 Honor.

13 THE COURT: Well, how many officers are involved
14 in these statements?

15 MS. CAMPBELL: We have three officers involved
16 in two different statements. They have fully
17 memorialized what they did in the case, and it's been
18 turned over to the defense.

19 THE COURT: Three officers taking two
20 statements.

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: Not three on each?

23 MS. CAMPBELL: No, sir. Just three officers
24 total on two different statements.

25 THE COURT: All right. The motion is denied.

1 **MS. CAMPBELL:** Thank you.

2 **THE COURT:** Call your first witness. Anything
3 else, Mr. Hisker?

4 **MR. HISKER:** No, Your Honor.

5 **THE COURT:** All right.

6 **MS. CAMPBELL:** The State would call Chief John
7 Ewing.

8 JOHN EWING, after being duly sworn, testifies as
9 follows:

10 **THE CLERK:** Thank you. Please have a seat in
11 the witness stand and state your full name for the
12 record.

13 **WITNESS:** John Ewing.

14 DIRECT EXAMINATION

15 **BY MS. CAMPBELL**

16 **Q** Chief Ewing, where are you currently employed?

17 **A** I am currently the chief of police in the City of
18 Bishopville in Bishopville, South Carolina.

19 **Q** And how long have you been employed there?

20 **A** I got sworn in as chief of police on June the 3rd of
21 this year.

22 **Q** And prior to that, where did you work?

23 **A** The Richland County Sheriff's Department.

24 **Q** And what was your rank there?

25 **A** I was a sergeant in the major crimes of the Richland

John Ewing - Direct by Ms. Campbell (In Camera)

19

1 County Sheriff's Department.

2 Q I want to turn your attention to a murder that
3 occurred on August the 8th of 2005. Were you one of
4 lead officers in that case?

5 A I was.

6 Q And tell the judge how you initially became involved?

7 A I was the on-call supervisor for evening shift that
8 week and also the on-call supervisor for homicides.
9 And I received a call of a possible homicide at the
10 Faraway Apartments on Faraway Road.

11 THE COURT: What's the date of that?

12 A It's going to be August the 8th, 2007 (sic).

13 Q 2005?

14 A Yes. Correct.

15 Q After becoming involved in that case, during the
16 course of your investigation did you develop any
17 suspects in the case?

18 A I did.

19 Q And who were the suspects you developed?

20 A I developed a Teran Scott and Octavia Middleton as a
21 suspect in the shooting.

22 Q Did you on occasion get any search warrants in the
23 case as regards to Octavia Middleton who I want to
24 concentrate on today?

25 A That's correct. On August the 11th, 2005, we were

1 able to secure a search warrant and arrest warrant
2 for Octavia Middleton, and they were served at the
3 residence where he was staying on Carnegie Street.

4 Q And in fact when you served the search warrant on
5 Carnegie street, was the defendant present?

6 A Octavia Middleton was present when I served the
7 search warrant and arrest warrant.

8 Q And tell the judge what happened when you initially
9 made contact with Octavia Middleton?

10 A I initially made contact with Mr. Middleton. He was
11 in the den area of the residence. I introduced
12 myself. He introduced himself to me. He admitted
13 that he was Octavia Middleton. I did advise -- I
14 then told him that we needed to go to headquarters
15 because I needed to talk to him about a case that I
16 was investigating, at which time he asked me if he
17 could smoke a cigarette. I said certainly. I
18 allowed him to go -- walked him over to his couch
19 there where he was wanting to smoke a cigarette.
20 Prior to letting him sit on the couch I searched the
21 couch, found some shotgun shells underneath the
22 couch, and then I let him sit on the couch and he
23 smoked a cigarette. After he smoked a cigarette we
24 departed to go back to headquarters, Richland County
25 Sheriff's Department in my vehicle.

John Ewing - Direct by Ms. Campbell (In Camera)

21

1 Q During the course of this time are you actively
2 interrogating him in any way?

3 A No, I was not.

4 Q Once you got back to headquarters, what happened?

5 A Once we got back to headquarters I asked Mr.
6 Middleton if he needed to use the restroom, if he
7 needed anything to drink. And then I took him to
8 Sergeant McDonald's office at the Richland County
9 Sheriff's Department at which time Deputy Chief David
10 Wilson was walking by. I asked him to step in the
11 office, and I verbally and through oral and written
12 form advised Mr. Middleton of his Miranda rights.

13 Q And was this prior to you asking him any questions or
14 interrogating him in any way?

15 A Yes, it was.

16 Q And I want to show you what's been marked as State's
17 Exhibit 1 for I.D. purposes at this point. Do you
18 recognize that?

19 A This is the Richland County Sheriff's Department
20 Interrogation and advice of rights form which we use.
21 I filled out the top part. And after advising Mr.
22 Middleton of his rights, he signed it acknowledging
23 that he had them read to him and that he understood
24 them.

25 Q And for the record, can you go through exactly what

1 rights he was advised of and how you did that?.

2 A Yes. If you look at this form as if you're reading
3 it, you're going to see that my checks are upside
4 down. The reason they're upside down is I do it the
5 same way every time I advise someone of their rights.
6 I'll turn the form around and I'll basically be
7 reading it upside down to the defendant when he is
8 sitting in front of me. And after I read each one of
9 them, I'll check it off to make sure that I covered
10 and didn't skip one.

11 And I filled out the top portion. It was on
12 August 11th, 2005, at approximately 12:41 hours. I
13 said, "Before we ask you any questions you must
14 understand your rights. You have the right to remain
15 silent. Anything you say can be used against you in
16 court. You have the right to talk to a lawyer for
17 advice before we ask you any questions and to have a
18 lawyer with you during any questioning. If you
19 cannot afford a lawyer one will be appointed for you
20 before any questions if you wish. If you decide to
21 answer questions now without a lawyer present you
22 still have the right to stop answering at any time.
23 You also have the right to stop answering at any time
24 until you talk to a lawyer."

25 After I read those, after I checked each one of

John Ewing - Direct by Ms. Campbell (In Camera)

23

1 them off, I asked him if he understood those. He
2 said he did. I then came down to what's called the
3 waiver of rights section on this form. And I read it
4 as follows. "I have read this statement of my rights
5 and understand what my rights are." It says: "I am
6 willing to talk and answer questions. I understand
7 and know what I am doing. No promises have been made
8 to me. No pressure or coercion of any kind have been
9 used against me."

10 I always underline and explain pressure or
11 coercion. I usually use the sentence like, I'm not
12 standing over you making you talk to me. I'm not
13 beating you up with a phone book. Do you understand
14 that? He stated that he did, at which time I said,
15 well, if you understand both of them, please affix
16 your signature at the advice of rights section, which
17 he did. Then he put his signature at the waiver of
18 rights section. Deputy Chief David Wilson was a
19 witness to all of those facts.

20 Q As well as you?

21 A I signed my name on it also.

22 Q And State's Exhibit 1 accurately -- or it's the
23 original?

24 A That's the original.

25 Q Advice of rights?

1 A Yes.

2 Q And once you had advised him of his rights and he'd
3 signed his waiver of rights, at that point did you
4 promise him anything to get him to talk to you?

5 A No. I did not.

6 Q Did you threaten him in any manner?

7 A No, ma'am.

8 Q Did you withhold any kind of drink anything like
9 that, food or anything of that nature?

10 A No, ma'am.

11 Q Did you -- at that point did he ever tell you he
12 didn't want to talk?

13 A No, he did not.

14 Q And at that point did he tell you he wanted to talk
15 to a lawyer?

16 A Not at that point. He did not.

17 Q And in your opinion as a sergeant in the major crime
18 unit, did he freely and voluntarily choose to speak
19 to you at that point?

20 A Yes, he did.

21 Q Tell the judge how you initiated the conversation
22 about what had happened that night?

23 A Well, first of all, he knew that we were conducting a
24 search warrant of his residence. And I explained to
25 him that I was investigating a murder which took

John Ewing - Direct by Ms. Campbell (In Camera)

25

1 place off Faraway Drive and that his name had come up
2 in the investigation. He admittedly denied any
3 involvement in the murder. He told me that -- later
4 on in the conversation as we were talking, he said
5 that he had been to the incident location on a
6 previous incident but he was not there at the time
7 when the shooting, robbery and murder had took place.

8 At that point Sergeant David Linfert entered
9 into the room and started asking Octavia just one or
10 two questions, and Octavia changed the story from
11 being at the -- actually the incident location, Your
12 Honor, was a gambling house. It was an apartment
13 where they had poker machines inside the apartments.
14 It was considered a gambling house.

15 So at that point he changed his story from had
16 been there one time to had been there several times
17 prior, but he still kept to his story that he was not
18 there on the day of the shooting and the murder.

19 I received a telephone call from Investigator
20 Scott Faust who was assisting me with the
21 investigation while I was interviewing Mr. Middleton.
22 And Investigator Faust informed me that they had
23 found a basketball jersey with what appeared to be
24 blood on it. Well, it was pretty important because
25 some of the witnesses in the murder case said that a

1 basketball jersey or similar type of jersey was worn
2 by one of the suspects that broke into the house.

3 And so when I confronted Octavia on the blood
4 being on the shirt, he said, "You're not going to
5 find the blood on my shirt." He said, "There is no
6 blood on there." And at that point he said I'd like
7 to -- "I don't want to talk any more. I'd like to
8 speak with my attorney."

9 Q Just before that, referring to your notes, did you
10 also prior to him asking about an attorney, did you
11 also ask him about some shotgun shells you had found
12 in the house?

13 A Please let me refresh my memory on my notes. I did.
14 I did ask him about the shotgun shells that were
15 found at his residence. And he stated that the
16 co-defendant, Teran Scott, had brought those shotgun
17 shells over to his residence.

18 Q And at that point after he gave you that information,
19 what happened?

20 A That's when he requested to speak with his attorney.

21 Q And did you do anything to try to assist him talking
22 to his attorney?

23 A I did. With him sitting right beside me, I asked him
24 who his attorney was. He stated that it was Lori
25 Murray. And I attempted to contact her by telephone,

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1 was unable to get her by telephone. So at that point
2 I took Mr. Middleton back to our holding cell at the
3 Richland County Sheriff's Department there.

4 Q And at that point was he under arrest on your -- you
5 did have a warrant outstanding for him?

6 A I did.

7 Q Was he under arrest?

8 A Yes.

9 Q After you put him in the holding cell after he
10 requested an attorney, what did you then proceed to
11 do?

12 A A third co-defendant was being interviewed by
13 Investigator Travis Holdorf. Since I was more
14 familiar with the case, I went and assisted
15 Investigator Holdorf with the investigation, with the
16 interrogation of one Harry Dukes.

17 Q And approximately how long do you know you were in
18 there?

19 A It would be a guess. I'd say 40 minutes maybe, maybe
20 not even that long.

21 Q Okay. During the course of that interview, after
22 being in there for however long, were you contacted
23 by another investigator?

24 A Immediately after finishing the interview with Mr.
25 Dukes, Investigator Eric Barnes of the Sheriff's

1 Department came to me and said that there was someone
2 in, we call it the D cell or the holding cell that
3 wished to speak with me.

4 Q And did you know who was in the D cell?

5 A That would be Octavia Middleton, because that's where
6 I took him and was holding him.

7 Q And once you had got that information from
8 Investigator Godfrey, what did you do?

9 A I got that from -- that didn't come from Godfrey. It
10 came from Investigator Barnes.

11 Q Okay.

12 A And at that time I went to the D cell. And Octavia
13 was in there, and he said to me, "I want to talk to
14 you in private." I then took him out of the D cell
15 and said, "Listen. I don't want to waste any more of
16 my time talking with you if you're going to not tell
17 me the truth of what happened." At that point he
18 said, "I was there. I did not shoot anyone. Teran
19 shot the guy." But he admitted to being there, being
20 present. He said that he did not want to get charged
21 for murder for something someone else did.

22 Q And your information from Investigator Barnes was at
23 whose -- who initiated the contact indicating that
24 Octavia Middleton wanted to talk with you?

25 A Octavia Middleton was banging on the door, and

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1 Investigator Barnes went to see what the noise was,
2 and that's when that came about.

3 Q At that point you had already advised him of his
4 rights earlier?

5 A That's correct.

6 Q And he indicated to you he wanted to talk to you at
7 this point?

8 A That's right. After he told me that he was there but
9 he didn't shoot anybody, that he didn't want to get a
10 murder charge for anyone, I then took him to Captain
11 Stan Smith's office. And on my way to Captain
12 Smith's office I saw an investigator, Brian Godfrey,
13 and I asked Brian Godfrey to come in and sit in with
14 us in the office. At that point Investigator Godfrey
15 really didn't know anything about the case because he
16 had not been helping us in the case.

17 So I told Godfrey, Investigator Godfrey, I said,
18 "This is Octavia Middleton." I said, "He's being
19 charged with murder. He originally said that he
20 wanted to talk with an attorney but now he's
21 requesting to speak with me again." And Godfrey
22 stated okay. And I then turned and looked at Octavia
23 and didn't say anything, and Octavia started telling
24 his side of the events and his side of the story.

25 Q And once he had given you his side of the story, did

1 you make any attempts to reduce that into writing?

2 **A** Yes, I did.

3 **Q** And, in fact, State's Exhibit No. 2 for I.D.
4 purposes, do you recognize that?

5 **A** This is the original statement from Octavia
6 Middleton. And you can see where it was signed as a
7 witness by Investigator Godfrey. And I, down in the
8 notary section it's five pages, and Octavia Middleton
9 signed it on each page where he's swearing that it's
10 his and also that he received a copy of it.

11 **Q** Okay. And in the first few questions in that
12 statement -- you don't need to publish the whole
13 thing for the judge. But in the first few things,
14 what did you again confirm about Octavia's
15 willingness to talk to you or wanting to talk to you?

16 **A** Would you like me to read the first three questions?

17 **Q** That would be perfect.

18 **A** My first question was -- Q is question. R is
19 response. The Q's, I asked the question. R was his
20 response. I said, "Octavia, when talking to me the
21 first time you mentioned to me that you wanted to
22 stop talking and talk to an attorney. Is that
23 correct?" His answer, response was "Yes." Question:
24 "Did you stop Investigator Barnes here at RCSO and
25 request to speak with me after our first

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1 conversation?"

2 "A Yes.

3 "Q Do you now wish to tell me what took place
4 on August the 8th, 2005, while at the Faraway
5 Drive address?

6 "A Yeah.

7 "Q Tell me what happened.

8 And then he restarted his rendition of events
9 that day.

10 Q And during the course -- after he initiated contact
11 with police after he invoked his rights, at any time
12 did he again tell you he wanted to talk to his
13 lawyer?

14 A No. He was very cooperative.

15 Q At any time did he tell you he didn't want to talk to
16 you any more?

17 A No. No, he did not.

18 Q During the second interview, at any point did you
19 coerce him, use pressure, threaten him in any manner?

20 A Absolutely not.

21 Q And did you promise anything in exchange for his
22 statement?

23 A No, I did not.

24 MS. CAMPBELL: Your Honor, at this time I'd
25 approach with State's Exhibit Nos. 1 and 2.

1 **THE COURT:** Okay.

2 (Document(s) handed to the Court)

3 **MS. CAMPBELL:** Thank you.

4 **Q** During the course of the investigation, did you
5 become aware of what type of weapon was used?

6 **A** It was a shotgun.

7 **Q** Okay. And as your investigation progressed, did you
8 in fact recover the shotgun that was used in this
9 case?

10 **A** We did.

11 **Q** And what type of shotgun was that? Do you remember?

12 **A** I can review my notes if you don't mind.

13 **Q** Okay.

14 **A** The shotgun was a Mossberg Maverick 88 with serial
15 number MV54234K, kilo.

16 **MS. CAMPBELL:** Your Honor, that's all I'd have
17 of this witness.

18 **THE COURT:** Mr. Hisker.

19 **MR. HISKER:** May it please the Court.

20 CROSS EXAMINATION

21 **BY MR. HISKER,**

22 **Q** Good afternoon, Chief Ewing.

23 **A** Good afternoon.

24 **Q** When Mr. Middleton asked for his attorney, you
25 actually -- you had the number already, didn't you?

John Ewing - Cross by Mr. Hisker (In Camera)

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- 1 A I don't know his attorney's number. I believe I
2 looked it up in the phone book.
- 3 Q Did you actually call on the speaker phone so that he
4 could hear it ringing and nobody answering?
- 5 A I believe that's what happened. I believe so.
- 6 Q Did you tell him that you knew his attorneys?
- 7 A No, I did not.
- 8 Q You didn't tell him that his attorneys would tell him
9 to cooperate?
- 10 A No, I did not.
- 11 Q Isn't it true that after he asked for an attorney you
12 continued to lay out some evidence that you had in
13 this case?
- 14 A Only after he requests to speak with us later, at a
15 later time. But when he requested to speak to an
16 attorney, we left or departed the office and went to
17 the D cell.
- 18 Q You didn't say anything to him after you left?
- 19 A No.
- 20 Q But you did tell him that you were going to charge
21 him with murder?
- 22 A Yes.
- 23 Q But you didn't serve the warrant on him at that time,
24 did you?
- 25 A I didn't serve the warrant on him, no.

1 Q But you told him that he was going to be charged with
2 murder?

3 A That's correct. Yes.

4 Q Did you tell him he was going to be charged with
5 murder if he didn't cooperate?

6 A No.

7 Q After Mr. Middleton invoked his right to counsel, you
8 never had him execute another Miranda warning, did
9 you?

10 A That's correct. No.

11 Q After you left him in the D cell, you have no way of
12 knowing what happened to him when he was in there?

13 A I didn't -- I put him in there and I walked away.

14 Q And other people have access to that room, correct?

15 A That's correct.

16 Q And you mentioned several other officers were
17 involved. Sergeant McDonald was involved in
18 questioning?

19 A No. I used Sergeant McDonald's desk, office.

20 Q You used his desk?

21 A Yes.

22 Q But he was not present?

23 A No.

24 Q And then Sergeant Wilson was available when he was
25 being questioned, correct?

John Ewing - Cross by Mr. Hisker (In Camera)

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1 A No. Deputy Chief Wilson just saw me advising him of
2 his rights and signed off on that he observed that
3 section.
4 Q But he didn't participate in any of the questioning?
5 A No.
6 Q At some point in the questioning an Investigator
7 Linfert entered the room. Is that correct?
8 A That's correct. That's correct.
9 Q And did Investigator Linfert take part in the
10 questioning?
11 A He asked a few questions, yes.
12 Q And he was part of this investigation?
13 A At that point, yes.
14 Q Now, when you left to go interview Dukes, there was
15 an Investigator Holdorf present at that
16 interrogation, correct?
17 A That's correct.
18 Q And did Investigator Holdorf stay there the entire
19 time?
20 A Yes.
21 Q Were there any other officers involved with
22 interviewing Dukes?
23 A None that I'm aware of.
24 Q Were there any other officers that participated in
25 your interrogation of Mr. Middleton before he

1 invoked?

2 A None that -- no. The answer to that question is no.

3 Q Now, when you went back to get Mr. Middleton, you
4 told him right then that you didn't want to waste any
5 more time unless he was going to tell you his side of
6 the story?

7 A That's not exactly how it went. He said, "I want to
8 talk to you in private." Then I said, Well, I don't
9 want to waste any more time unless you're going to
10 tell the truth." And that's when he said, "I was
11 there. I didn't shoot anybody. Teran shot the guy.
12 I didn't know he was going to shoot him. I don't
13 want to get a murder charge for nobody."

14 Q But you'd admit at that time you didn't question him
15 at all about what took place while he was in the D
16 cell?

17 A No.

18 Q You didn't ask him if he wanted to waive his right to
19 an attorney at that time, did you?

20 A No, I did not.

21 Q Now, when you talked to Mr. Middleton initially, you
22 just do it orally, right?

23 A Originally. Like I would sit down -- we'll sit down
24 beside each other and he'll tell me what's happening,
25 and then I'll take notes in my head of what happened.

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- 1 And then we come to writing it down on paper, it's
2 exactly the way he says it on paper.
- 3 Q So how long would you say that you were with Mr.
4 Middleton after he initiated contact with you?
- 5 A It wasn't long, because he was forthcoming. I would
6 guess 45, 50 minutes maybe from the time that we were
7 talking and putting it on paper.
- 8 Q So at some point towards the end of that you type up
9 a statement on the computer?
- 10 A That's correct.
- 11 Q And he signs?
- 12 A That's correct. After it's read to him and he has a
13 chance to read it. That's correct.
- 14 Q But at no time was he advised of his rights again?
- 15 A Not again, because he initiated contact back with us
16 and then my first few questions were about his
17 requesting an attorney and reminding him of that.
- 18 Q When did Mr. Middleton actually get served with this
19 murder warrant?
- 20 A I'm not sure.
- 21 Q You didn't serve it?
- 22 A I don't believe I did.
- 23 Q You didn't serve it that day?
- 24 A I don't -- I can't -- I didn't serve it. I don't
25 believe I did.

- 1 Q When you took Mr. Middleton in the room and you say
2 you didn't say a word, you did that on purpose,
3 didn't you?
- 4 A I was wanting him to be forthcoming and tell the
5 truth, yes.
- 6 Q But you did that in a way because you know that if he
7 initiates the contact then you don't necessarily --
8 that might absolve you of not reading him his rights?
- 9 A He had already initiated contact at the D cell. But
10 I was going forward with it and let him -- if he
11 wanted to talk, I was going let him pour his soul,
12 let him say what he wanted to say.
- 13 Q Did you at any time show him Mr. Dukes' statement?
- 14 A I don't believe I did.
- 15 Q Did you tell him that Teran Scott had implicated him
16 at any time?
- 17 A I don't recall.
- 18 Q Was Captain Smith present when you took the second
19 statement?
- 20 A No, sir.
- 21 Q He was not?
- 22 A No, sir.
- 23 Q But you went into his --
- 24 A Office.
- 25 Q You took him into his office?

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1 A That's correct.

2 Q And he didn't enter that office at any time?

3 A No, he did not.

4 Q That's all I have.

5 MS. CAMPBELL: Just a couple of questions.

6 REDIRECT EXAMINATION

7 BY MS. CAMPBELL

8 Q You'd already gotten the warrant prior to even going
9 and picking him up?

10 A That's correct.

11 Q It wasn't --

12 THE COURT: Say that again. I didn't hear what
13 you said.

14 Q You had already gotten the arrest warrant for murder
15 before ever picking up Octavia Middleton?

16 A I sought it that morning.

17 Q And so when you informed him he was under arrest for
18 murder, it wasn't that you were going to charge him
19 with murder but that he was already under arrest for
20 murder?

21 A That's correct.

22 Q He also you asked Captain Smith. I show you the
23 statement, the front page. Up there at the top it
24 says: "In the presence of Captain Smith"?

25 A I was -- I can explain that.

1 Q Yes.

2 A I was using Captain Smith's computer. It's a
3 template, a pre-made template on the computer, and I
4 did not go through and take his name out and put my
5 name on. But Captain Smith was not present.

6 Q And he asked you about whether or not you mentioned
7 anything about an attorney. The first question that
8 you asked him that day and then reduced to writing is
9 what?

10 A "Octavia, when we were talking the first time you
11 mentioned to me that you wanted to stop talking and
12 talk to an attorney. Is that correct?"

13 "A Yes.

14 "Q Did you stop Investigator Barnes here at
15 RCSI and request to speak with me after our
16 first conversation?

17 "A Yes.

18 "Q Do you now wish to tell me what took place
19 on August the 8th, 2005, while at the Faraway
20 Drive address?

21 "A Yeah."

22 Q Thank you.

23 MS. CAMPBELL: That's all.

24 THE COURT: Anything further?

25 MR. HISKER: Nothing further from this witness.

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1 **THE COURT:** You may come down.

2 **WITNESS:** Thank you.

3 **MS. CAMPBELL:** Your Honor, may he be excused for
4 purposes of this hearing?

5 **THE COURT:** Where is he going?

6 **MS. CAMPBELL:** He's got to go back to
7 Bishopville.

8 **WITNESS:** Yes, sir. I've got a meeting with my
9 department today at 4:30.

10 **THE COURT:** Crime wave of Bishopville.

11 **WITNESS:** Sort of.

12 **THE COURT:** Good luck. Thank you.

13 **WITNESS:** Thank you, sir.

14 **MS. CAMPBELL:** The State would call Eric Barnes.

15 ERIC BARNES, after being duly sworn, testifies
16 as follows:

17 **THE CLERK:** Thank you. Please have a seat in
18 the witness stand and state your full name for the
19 record.

20 **THE WITNESS:** Eric Barnes.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Sergeant Barnes, where are you employed?

24 **A** The Richland County Sheriff's Office.

25 **Q** What do you do there, sir?

1 **A** I am a sergeant in the burglary team in
2 investigations.

3 **Q** I want to refer to the murder that occurred on August
4 the 8th of 2005. Were you actively involved in that
5 investigation in any way prior to the 11th?

6 **A** No, ma'am.

7 **Q** And tell the judge how you became involved in this
8 case?

9 **A** While sitting in my particular cubicle within CID,
10 CID is a group of cubicles, non-walled cubicles,
11 there is probably about 40 investigators in that
12 area, I heard a banging on the D cell door. D cell
13 is located outside of CID, outside of our area down
14 the hall and around the corner. I went to check on
15 who was making the noise, and --

16 **Q** And at that point did you know who was in there?

17 **A** I didn't know who was in there.

18 **Q** And when you went to check on who was making the
19 noise, what kind of noise was it? A banging?

20 **A** A banging on the door; yes, ma'am.

21 **Q** When you got there what happened?

22 **A** The defendant who I later found out was Octavia
23 Middleton said that he wanted to speak with the
24 Detective that had arrested him and had placed him in
25 the D cell. From time to time we have several people

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1 who end up in that D cell. And so I asked him
2 several questions trying to inquire as to who it was
3 that had actually arrested him. He described the
4 detective. I asked him, I thought it was going to be
5 Sergeant Ewing. I asked him to describe Sergeant
6 Ewing. He did. And --

7 Q How did he describe him?

8 A Tall, white male, dark hair. We had a couple of
9 things going on. Well, I remember we had the
10 shooting murder situation going on. I felt like that
11 was probably what it was related to. I asked him if
12 it was in reference to that. He said yes. So I went
13 and got Sergeant Ewing and advised him.

14 Q And again, what was the first thing that Octavia
15 Middleton said to you prior to you initiating any
16 questioning?

17 A That he wanted to talk to the detective.

18 Q And when you went down there that day, you didn't
19 even know who was in the cell?

20 A That is correct.

21 Q Thank you, sir.

22 MR. HISKER: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. HISKER

1 Q Good afternoon, Investigator Barnes.

2 A Good afternoon.

3 Q When you go to this D cell, you can go right in that

4 room?

5 A I have to go outside of CID, the area of CID and walk

6 down the hall and around the corner, and it's located

7 around the corner.

8 Q But you can just go ahead on in? You can open that

9 door yourself?

10 A I can, yeah. He can't open it coming out.

11 Q He can't open it. But anybody on the outside can

12 open that door?

13 A Yes, sir.

14 Q You've got no way to determine whether or not anybody

15 was in there before you, correct?

16 A That is true.

17 Q Now, and you did know some details about this

18 shooting that was being investigated?

19 A I can't recall those details right now. But my

20 assumption is that I knew a little bit about what was

21 going on just because of the nature of our business.

22 Q Yeah. So it's fair to say that the investigators

23 share information?

24 A We share information all the time. Right.

25 Q So there could be multiple officers, investigators

Eric Barnes - Cross by Mr. Hisker (In Camera)

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1 that know about what's going on in this case?

2 **A** That is why I asked him which investigator he was
3 talking about.

4 **Q** But you had a good idea that it was Investigator
5 Ewing?

6 **A** Well, after he described him, yes. I had no idea who
7 he was or who had put him in there. But after he
8 described him and I was making assumptions and asking
9 him about those assumptions and he confirmed those, I
10 realized it was Sergeant August.

11 **Q** But you specifically said before you knew they had a
12 shooting that Ewing was investigating?

13 **A** I knew there was a shooting that was being
14 investigated. But quite frankly, there's a lot of
15 shootings that we're investigating.

16 **Q** All right. That's all, Judge.

17 **THE COURT:** Anything further of this witness?

18 **MS. CAMPBELL:** No, sir.

19 **THE COURT:** You may come down. May the witness
20 be excused? Without objection.

21 **MS. CAMPBELL:** Your Honor, that's all the State
22 would have as to the initial statement. I would have
23 some cases I would like to hand up. Or not.

24 **THE COURT:** We'll see. What's the defense
25 position?

1 **MR. HISKER:** Judge, I think I'll probably put
2 the defendant up.

3 **THE COURT:** All right.

4 **MS. CAMPBELL:** Okay.

5 **THE COURT:** Come around, sir.

6 OCTAVIA MIDDLETON, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Please have a seat in
9 the witness stand and state your full name for the
10 record.

11 **WITNESS:** State my name for the record?

12 **THE CLERK:** Yes, please.

13 **WITNESS:** Octavia Middleton.

14 DIRECT EXAMINATION

15 **BY MR. HISKER**

16 **Q** Good afternoon, Mr. Middleton.

17 **A** Good afternoon, sir.

18 **Q** How long would you say you were in the office being
19 interrogated by Ewing before you requested your
20 attorney?

21 **A** Probably about not even 20 minutes.

22 **Q** Tell the judge how that occurred. What prompted you
23 to ask for an attorney?

24 **A** We entered the office and he read me my memoranda
25 (sic) rights. And I told him that I would like for

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1 my attorney to be present. And he said then, "Who is
2 your attorney?" I said, "Lori Murray at the Wexford
3 Law Firm." He said, "Oh, we are good friends." And
4 he picked up the phone and initiated trying to call
5 her. And he let the phone ring for a few minutes. I
6 did not hear the phone. It was not on a speaker
7 phone. And then he hung up the phone and said he
8 couldn't get no answer.

9 And then he -- after he hung up he said, "Me and
10 the rest of the law firm we are good friends. They
11 will tell to you cooperate with us. We are good
12 friends, and this is the advice that they will give
13 you, to cooperate with us."

14 And at that point he sat back in front of me and
15 started asking me questions concerning the incident
16 and showing me different evidence, like mug shot
17 line-ups, statements that was written by certain
18 witnesses.

19 And I -- he kept on asking me am I sure that I
20 want my lawyer. And I'm like, "Yes, I want my lawyer
21 before I answer any questions." And he kept on
22 badgering me about the evidence and who pointed me
23 out in line-ups and the evidence that they got
24 pointing me to the scene. And I was like, "I want to
25 talk to my lawyer." Then --

1 Q Mr. Middleton, go back to the line-up. What line-up
2 were you shown? Do you recall a line-up?

3 A Yes, sir. It was the line-up, it had the initials T.
4 S. under the bottom of it with my picture circled,
5 and it was the initials of one of my co-defendants.

6 Q And you're sure that occurred after you asked for a
7 lawyer?

8 A Yes, sir.

9 Q After he shows you the line-up, tell the judge what
10 happened after that?

11 A After showing me the line-up, he kept on questioning
12 me as in telling him what I know or was I involved
13 with anything in the crime because he got these
14 people implicating me as knowing something about the
15 crime. I told him I wanted to talk to my lawyer, and
16 he showed me a statement written by Teran Scott and
17 then he showed me something with some witnesses, the
18 victims in the crime saying that they can identify me
19 and this and that and the third.

20 He showed me some other line-ups, but I didn't
21 get a real good picture of whether they were circled
22 or the initials that was underneath the line-ups.
23 And after that he left. He left the room. And I
24 think another --

25 Q Let's go back just a little bit. What was his

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1 attitude? How did his attitude progress as you kept
2 asking for a lawyer?

3 **A** He got more -- he got frustrated with me not
4 complying or him not getting the progress or getting
5 answers he wanted to hear.

6 **Q** Did he at some point tell you you were wasting his
7 time?

8 **A** Yes, he did tell me I was wasting his time and that
9 if I didn't comply he was going to charge me with the
10 murder charge if I didn't tell him what really
11 happened at that spot.

12 **Q** And did he tell you what happened to people who
13 didn't cooperate?

14 **A** Yes. He said that he would guarantee they'd get the
15 max in jail and it would be beneficial for me to
16 cooperate with them if I don't want to be in jail for
17 the rest of my life.

18 **Q** But before he left, did you still insist on seeing an
19 attorney before you talked?

20 **A** Yes, sir.

21 **Q** Tell the judge what happened once you were put --
22 once he got frustrated with you and left the room?

23 **A** Once he left the room another investigator asked me a
24 few questions but he went in another route prior to
25 the way that the other officer was saying, as in he

1 asked me --

2 **MS. CAMPBELL:** Your Honor, could he just back
3 off that a little? I just can't hear him.

4 **Q** Just back off the microphone just a little bit.

5 **MS. CAMPBELL:** You could talk a little louder.

6 **A** Another officer asked me a few questions and I told
7 him that I wanted to talk to my lawyer before I
8 answered any questions. He didn't ask me many
9 questions, but he asked me about two or three
10 questions. And by that time the officer walked back
11 in the room. They took a few minutes and talked
12 between each other. And then he said, well, take him
13 to the cell, and they then took me to the D cell.

14 **Q** How long were you in that D cell before you were
15 contacted by another officer?

16 **A** Probably 15 to 20 minutes.

17 **Q** What about at that point?

18 **A** While I was in the D cell, one of the officers who
19 investigated was questioning me along with another
20 officer approached the D cell with a statement from
21 Harry Dukes. They opened the cell and they advised
22 me, they told me that your co-defendant have
23 implicated you. Well, they said Harry Dukes have
24 implicated you as being a part of this crime. And
25 they told me that it would be in my best interest to

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1 cooperate with them at this point because if not then
2 they would make sure that I spend the rest of my life
3 in jail. And they then left the tank for me to think
4 about what they had just presented to me.

5 Q Now, did they actually let you read the statement, or
6 did they just tell you that's what he was saying?

7 A They showed me the statement. I didn't read it but
8 they showed me his -- I was able to see his signature
9 on the bottom of the statement.

10 Q Now, before they came in, were you making any attempt
11 to contact the officers on the outside of the D cell?

12 A No, sir.

13 Q What happened after these officers told you that it
14 was best for you to cooperate?

15 A After the two officers left, probably a minute or two
16 later, another officer walked past the D cell. I
17 think he had like a cup of coffee or something in his
18 hand. And I tapped the glass and I stopped him as he
19 walked past the room. And I said, "Could you go and
20 get the officer for me that was investigating me?"
21 He asked me to describe him. I told him a heavysset
22 Caucasian guy. And I said, "He's kind of tall." And
23 he said, "Okay." And he went and got the officer who
24 was investigating me. I think that was Officer
25 Ewing. I think that's his name. And they came back

1 and took me back to be interviewed.

2 Q Now, you didn't know the officer's name at that time,
3 did you?

4 A No.

5 Q How many officers would you say that you saw that day
6 related to your case?

7 A It was at least four. That I know for sure, it was
8 four. They was in and out throughout the interviews.

9 Q Now, when Officer Ewing came back to the D cell, tell
10 me what happened then?

11 A When Officer Ewing came to the D cell he opened the
12 door and asked me did I ask Mr. Barnes to come and
13 get me, come get him. I said, "Yes." Then he said,
14 "I'm tired of wasting my time with you. So if you're
15 not going to tell me what I want, the truth, then you
16 don't be bothering me. And I'm not -- something like
17 in that area of that. And he said something in that,
18 around that area. I can't remember the exact words
19 he said, but it was in the similar -- like he said,
20 if I am going to waste his time, then he didn't want
21 to talk to me. And I told him I'm not going to waste
22 his time, and he walked me back to his office to be
23 interviewed.

24 Q Now, did he ever advise you of your rights again?

25 A No, sir.

Octavia Middleton - Direct by Mr. Hisker (In Camera)

53

- 1 Q Did he ever ask you if you wished to waive your right
2 to an attorney?
- 3 A No, sir.
- 4 Q So other than what's in that written statement of you
5 initiating contact, he never mentioned you previously
6 wanting to speak with an attorney?
- 7 A No, sir.
- 8 Q Did he ever ask you if anybody else had contacted you
9 from his department?
- 10 A No, sir.
- 11 Q Now, when you started telling him your side of the
12 story, was he taking it down on the computer at that
13 time, or did that happen later?
- 14 A From what I remember, he was writing it down as I
15 told him.
- 16 Q But you didn't have an opportunity to read anything
17 on that paper until he was finished talking to you?
- 18 A Yes, sir.
- 19 Q So the part at the top that says your right to
20 counsel and you're waiving that, you never read that
21 until after the statement was done?
- 22 A Yes, sir.
- 23 Q Would you have knocked on that door had some other
24 officer not come in and told you that your
25 co-defendant was implicating you?

1 A No, sir, I wouldn't.

2 Q What would you have asked for?

3 A I would have asked for my attorney.

4 Q That's all I have. Please answer any questions Ms.
5 Campbell has.

6 A Yes, sir.

7 CROSS EXAMINATION

8 BY MS. CAMPBELL

9 Q Did you understand what your rights were?

10 A When he previously read them to me, yes. Yes, I do
11 understand them.

12 Q And, in fact, you did understand because initially
13 you talked to him but then you decided you'd better
14 get a lawyer?

15 A I didn't initially talk to him, ma'am.

16 Q You didn't ever initially say anything to him?

17 A No, ma'am.

18 Q You never told him about going to the gaming house
19 before?

20 A No, ma'am.

21 Q You never told him where the shotgun shells came
22 from?

23 A No, ma'am.

24 Q You never told him anything prior to saying, "I want
25 a lawyer"?

Octavia Middleton - Cross by Ms. Campbell (In Camera)

55

- 1 A No, ma'am.
- 2 Q So, do you recognize State's Exhibit 1 which is up
3 there? This is a copy of it?
- 4 A Yes. I remember that.
- 5 Q Okay. And did you acknowledge that you understood
6 what your rights are?
- 7 A Yes, I did.
- 8 Q Were you coherent that day?
- 9 A Yes. Was I coherent? Was he understandable?
- 10 Q Yes. Was he understandable?
- 11 A Yes.
- 12 Q And you understand what your rights were?
- 13 A Yes.
- 14 Q Because you've been in trouble on multiple occasions
15 before. Isn't that true?
- 16 A Yes, I have.
- 17 Q And you've been advised of your rights on multiple
18 occasions. Isn't that true?
- 19 A Yes, I have.
- 20 Q And each time did you understand what your rights
21 are?
- 22 A Yes, I have.
- 23 Q And do you understand what the ramifications of
24 getting a lawyer are versus going to jail and things
25 of that nature?

1 A Repeat the question?

2 Q You understand, you know, that you have a right to
3 have a lawyer prior to making any statements?

4 A Yes, ma'am.

5 Q And in fact though on this one, did you understand
6 what the waiver of rights was?

7 A Yes, ma'am.

8 Q And you signed that also?

9 A Yes, ma'am.

10 Q So initially you indicated you wanted to talk to
11 them?

12 A Yes, ma'am.

13 Q But now your story is that you didn't want to talk to
14 him and you never said anything to him prior to
15 asking for your lawyer. Is that what your testimony
16 is here today? Or are you mixed up?

17 A Repeat the question?

18 Q You signed the waiver of rights which means you
19 wanted to talk to them?

20 A Yes, ma'am.

21 Q But your testimony here today is that you didn't talk
22 to him at all.

23 A Initially, from the first beginning, I did not say
24 nothing to him.

25 Q You didn't say anything to him even though you signed

Octavia Middleton - Cross by Ms. Campbell (In Camera)

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1 the waiver of rights indicating you wanted to talk to
2 him? That's your testimony? Just yes or no.

3 A Yes, ma'am.

4 Q And do you know how many times in the past you have
5 been advised of your rights?

6 A No, ma'am.

7 Q And do you know how many lawyers you've had in the
8 past?

9 A No, ma'am.

10 Q If I told you you'd been arrested on, gosh, 20 times,
11 would you disagree with that?

12 A Yes, ma'am.

13 Q How many times have you been arrested?

14 A I don't know.

15 Q And your testimony is today now that Investigator
16 Ewing after you invoked your rights became frustrated
17 with you?

18 A Yes, ma'am.

19 Q And how did that make you feel?

20 A It made me feel -- it made me feel -- after he
21 invoked my rights?

22 Q After you invoked your rights your testimony is that
23 he continued to talk to you?

24 A Invoked in --

25 Q You said you wanted an attorney?

- 1 A Okay. Yes.
- 2 Q Do you understand what "invoked" means?
- 3 A No, ma'am.
- 4 Q Did you ask for your attorney?
- 5 A Yes, ma'am.
- 6 Q Did you understand you had the right to ask for an
- 7 attorney pursuant to this?
- 8 A Yes, ma'am.
- 9 Q And you did that, right?
- 10 A Yes, ma'am.
- 11 Q And at that point your testimony was is that
- 12 Investigator Ewing was badgering you?
- 13 A Yes, ma'am.
- 14 Q That he was threatening you?
- 15 A Yes, ma'am.
- 16 Q And how did that make you feel?
- 17 A Threatened.
- 18 Q And at that point you stuck to your guns and you kept
- 19 telling him you wanted a lawyer no matter what?
- 20 A No, ma'am.
- 21 Q And how is Lori Murray your lawyer? Did you have
- 22 pending charges at the time?
- 23 A My previous case that I was incarcerated for, she
- 24 represented me on the case.
- 25 Q And in fact when you were incarcerated before, is

Octavia Middleton - Cross by Ms. Campbell (In Camera)

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- 1 that when you met Teran and "Boo"?
- 2 **A** No, ma'am.
- 3 **Q** In Allendale?
- 4 **A** No, ma'am.
- 5 **Q** So at that point you're feeling threatened. You know
- 6 you need to get a lawyer. It's important, right?
- 7 **A** Yes, ma'am.
- 8 **Q** And then now your testimony is that then once you
- 9 were in the D cell two more unknown people came and
- 10 talked to you. Is that right?
- 11 **A** They wasn't unknown.
- 12 **Q** Who were they?
- 13 **A** Oh, I don't know their names. But they was one of
- 14 the officers that questioned me that was in the
- 15 office during my interview with Officer Ewing.
- 16 **Q** And they came in and waived a piece of paper and you
- 17 recognized the signature on it?
- 18 **A** Yes. I have could have read it, but I just seen his
- 19 signature and they told me what it was.
- 20 **Q** And whose signature did you see?
- 21 **A** Harry Dukes.
- 22 **Q** And your testimony is here today but for that
- 23 happening with these two unknown people you wouldn't
- 24 have initiated contact?
- 25 **A** It wasn't just the fact of the paper. It was the

1 constant threatening, the constant where they was
2 coming at me which made me feel threatened and what
3 made me -- what pressured me into calling for a
4 reinterview.

5 Q And you mentioned that when you called for an
6 interview someone was just walking by with a cup of
7 coffee?

8 A That's when I see -- that's -- because when the
9 officers came and showed me that, they didn't give me
10 time to respond. They just left. And then I
11 thought, and when the officer came through I stopped
12 him. And he stopped to the door and asked me what I
13 wanted, and I told him what I wanted.

14 Q So you hadn't been banging on the door prior to the
15 officer coming for a few minutes?

16 A I was not banging on the door. No, ma'am.

17 Q So that was not true then. Can you read and write?

18 A Yes, ma'am.

19 Q And there is no dispute here that you had an
20 opportunity to review your statement before signing
21 it, didn't you?

22 A Yes, ma'am.

23 Q And when you reviewed the statement, part of what
24 you're reviewing it for is to make sure everything is
25 in there, right?

Octavia Middleton - Cross by Ms. Campbell (In Camera)

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- 1 A Yes, ma'am.
- 2 Q So did you put in your statement that you felt
3 threatened?
- 4 A No, ma'am.
- 5 Q Did you put in your statement that those other guys
6 came and showed you that statement?
- 7 A No, ma'am.
- 8 Q But you did put in your statement about how you first
9 asked for your lawyer. That was in your statement,
10 right?
- 11 A That's what they asked me.
- 12 Q Okay. And then did you stop Investigator Barnes and
13 ask to speak with him?
- 14 A You already asked me, and I answered the question.
- 15 Q Didn't they tell you had a right to add anything you
16 wanted in it?
- 17 A No, they didn't.
- 18 Q You've been in the system how many times, sir?
- 19 A Three.
- 20 Q And you've been in and out of trouble pretty much
21 your whole adult life?
- 22 A Pretty much.
- 23 Q Is that fair? Okay. And you knew your rights. And
24 the officers were getting more threatening, coming
25 down on you harder. And you just suddenly changed

1 your mind and decided to cooperate? You didn't want
2 to talk to your lawyer any more?

3 **A** I was pressured.

4 **Q** You understand the system so well that you even write
5 your co-defendant letters, don't you?

6 **A** Yes. I have wrote them letters before.

7 **Q** And you talked about what the evidence was?

8 **A** Never.

9 **MR. HISKER:** Judge, I object to this. I think
10 this is going beyond the scope of this limited
11 hearing.

12 **THE COURT:** What's the relevance?

13 **MS. CAMPBELL:** The relevance is his experience
14 with the system and how he reviews the evidence and
15 everything.

16 **THE COURT:** I'll sustain the objection.

17 **Q** Were you familiar with the evidence in your case?

18 **A** Was I familiar with it?

19 **Q** Mm-hmm (affirmative).

20 **A** Yes, ma'am.

21 **Q** And in fact you make mention of how we can't find one
22 witness?

23 **MR. HISKER:** Objection.

24 **A** Never.

25 **MR. HISKER:** Objection.

1 **THE COURT:** I don't know. Is it in this
2 statement? Is that what she's talking about?

3 **MR. HISKER:** It's got nothing to do with this
4 statement. No, Your Honor.

5 **MS. CAMPBELL:** It just shows, Your Honor, I mean
6 his ability to recant on these facts up here is
7 because he reviews the evidence all the time. I'm
8 just showing a basis of his knowledge.

9 **MR. HISKER:** I mean, he's obviously reviewed
10 discovery.

11 **MS. CAMPBELL:** If he stipulates to that, that's
12 all I need.

13 **MR. HISKER:** We've reviewed all discovery.

14 **THE COURT:** And?

15 **MR. HISKER:** That's part of the preparation of
16 the case.

17 **THE COURT:** What's the objection?

18 **MR. HISKER:** I'm objecting to her asking
19 questions about this letter that she has got from --

20 **THE COURT:** I sustained your objection. She
21 can't use the letter.

22 **MR. HISKER:** Well, that's what she was
23 continuing to go on about.

24 **THE COURT:** I assumed she was talking about
25 something that's in here that I haven't read. I

1 haven't read all this evidence.

2 Q You reviewed the discovery of the case?

3 A Yes, I have.

4 Q At any time since this have you or your lawyer filed
5 any grievances against any members of the Sheriff's
6 Department?

7 A Have we filed any grievances against any members of
8 the Sheriff's Department? Is that your question?

9 Q Yes, sir.

10 A Not to my knowledge.

11 Q Thank you.

12 MR. HISKER: Very briefly, Your Honor.

13 THE COURT: Certainly.

14 REDIRECT EXAMINATION

15 BY MR. HISKER

16 Q When did you first tell me about the incident that
17 occurred at the Sheriff's Department?

18 A When you first came to see me.

19 Q The first time I met you. Did I have any discovery
20 at that time?

21 A No, sir.

22 Q And how soon after your arrest did I come and see
23 you?

24 A Probably a few weeks.

25 Q A few weeks? Could it have been a couple of days?

Octavia Middleton - Redirect by Mr. Hisker (In Camera)

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1 A Yes, it could have been.

2 MS. CAMPBELL: Objection to him leading, Your
3 Honor.

4 Q Do you recall when we came up for your bond here?

5 A Yes.

6 Q I met with you that day, didn't I?

7 A Yes, sir.

8 Q Now, you have been in and out of the system a couple
9 of times?

10 A Yes, sir.

11 Q Do you know any of the consequences of initiating
12 contact with police officers?

13 A No, sir.

14 Q That's all I have.

15 THE COURT: All right. You may come down, sir.
16 Next witness.

17 MR. HISKER: That's all. I don't intend to call
18 any more witnesses.

19 THE COURT: How many statements were there?

20 MS. CAMPBELL: There's another statement the
21 next day, Your Honor.

22 THE COURT: All right. So we've got the
23 statement first given to Mr. Ewing, verbal.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: Then you've got this second --

1 what's the time of these statements?

2 **MS. CAMPBELL:** Your Honor, he was initially
3 advised of his rights at 12:41.

4 **THE COURT:** Is that 12:41?

5 **MS. CAMPBELL:** Yes, sir. He then spoke for a
6 number of minutes to Investigator Ewing. I believe
7 the testimony was 20 to 30 minutes maybe. He then
8 invoked his rights. Investigator Ewing went and took
9 a statement from Mr. Harry Dukes. And then prior to
10 doing the actual written statement which I believe is
11 at 3 --

12 **MR. GOLDBERG:** 3:49.

13 **MS. CAMPBELL:** 3:49, Your Honor. I think the
14 testimony was from Investigator Ewing that they had
15 spoken for about 45 or 50 minutes prior to him
16 initiating the written statement. So it would be
17 around 3:00 when he came back and made contact, when
18 he got Sergeant Barnes.

19 **THE COURT:** But the first verbal statement to
20 Ewing was given prior or subsequent to the advice of
21 rights?

22 **MS. CAMPBELL:** Subsequent to the advice of
23 rights.

24 **THE COURT:** That's what he testified.

25 **MR. HISKER:** It is.

1 **THE COURT:** Okay.

2 **MR. HISKER:** But, Judge, those statements were
3 only as it related to shotgun shells found at the
4 apartment and that there is no blood on the jersey.
5 Other than that --

6 **THE COURT:** That he had been there but not on
7 that day.

8 **MR. HISKER:** Yes.

9 **THE COURT:** So there's three topics. All right.
10 How do you wish to proceed? Are you going to move
11 onto the second statement?

12 **MS. CAMPBELL:** I can go ahead and put in the
13 second statement.

14 **THE COURT:** All right.

15 **MS. CAMPBELL:** The State calls Sergeant
16 McDaniels.

17 WALTER S. MCDANIELS, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Please have a seat in
20 the witness stand.

21 **THE COURT:** That would be the third statement.

22 **MS. CAMPBELL:** Third statement. The first is
23 the oral. The second is the first written statement,
24 and the third is the second written statement.

25 **THE CLERK:** State your full name.

1 **THE WITNESS:** Walter Shawn McDaniels.

2 DIRECT EXAMINATION

3 **BY MS. CAMPBELL**

4 **Q** Sergeant McDaniels, where are you employed?

5 **A** I'm currently employed with the Richland County
6 Sheriff's Department.

7 **Q** What do you do there, sir?

8 **A** Currently I'm a sergeant over the cold case homicide
9 squad.

10 **Q** I want to turn your attention back to August of last
11 year. In July had there been a shooting on Greystone
12 Boulevard?

13 **A** Yes, there was. On July 15th at 5:00.

14 **Q** On July the 15th?

15 **A** Yes, ma'am.

16 **Q** And that would be approximately three weeks prior to
17 this murder occurring?

18 **A** Yes, ma'am.

19 **Q** And tell the judge briefly what had occurred on
20 July 15th on Greystone Boulevard that you were
21 involved in?

22 **A** I was the lead investigator in reference to a
23 well-known, well-respected local radio personality
24 being shot in the early morning hours of July 15th,
25 2005.

Walter S. McDaniels - Direct by Ms. Campbell (In Camera)

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- 1 Q And where did this event take place?
- 2 A On Greystone Boulevard at the Clear Channel radio
3 station.
- 4 Q And what kind of weapon was used in this shooting?
- 5 A There was a shotgun used.
- 6 Q During the course of your investigation over the next
7 several weeks, did you develop certain suspects in
8 the case in August?
- 9 A Yes, we did.
- 10 Q And who were the suspects in the case?
- 11 A The suspects were Octavia Middleton and Teran Scott.
- 12 Q Did you make any attempts to interview either Mr.
13 Scott or Mr. Middleton?
- 14 A Yes, I did.
- 15 Q And specifically as to Mr. Middleton, when did you
16 make contact with him?
- 17 A On August 11th of 2005.
- 18 Q And what time of day was that?
- 19 A That was at 1820. That was at 6:20 p.m.
- 20 Q So that would be after he had given the statements
21 about the murder?
- 22 A Yes, ma'am.
- 23 Q And why did you reinitiate contact with him instead
24 of just letting Investigator Ewing handle it?
- 25 A Well, because I was more aware of the facts involving

1 the shooting of the victim on Greystone Boulevard.

2 Q When you made contact with Octavia Middleton, where

3 were you that day?

4 A I was at headquarters.

5 Q And how did you come in contact with him?

6 A I was advised by Captain Smith that Octavia Middleton

7 was in his office and that there had been some

8 information given to Captain Smith in reference to

9 Octavia Middleton being the one responsible for

10 shooting the victim in the Greystone Boulevard

11 shooting.

12 Q And I want to show you what's been marked as State's

13 Exhibit 3 for identification purposes. Do you

14 recognize that?

15 A Yes, I do.

16 Q And what is that?

17 A This is the original advice of rights form that I

18 used in advising Octavia Middleton.

19 Q For the record, can you go through exactly how you

20 advised him of his rights that afternoon?

21 A Sure. I fill out the top which is his name, place,

22 the officer being me at the time, the date, August

23 11th, 2005. The time is also depicted at 1820. I

24 then began to read his Miranda rights to him. The

25 way the form is actually set up, it is sectioned,

Walter S. McDaniels - Direct by Ms. Campbell (In Camera)

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1 broken down into sentences.

2 I began to read: "Before we ask you any
3 questions you must understand your rights." I then
4 paused and asked him if he understood that particular
5 sentence. He answered yes. I then read on. "You
6 have the right to remain silent." I asked him again
7 if he understood that. He paused and answered yes.
8 I checked the box next to each sentence.

9 Then again I asked him: "Anything you say can
10 be used against you in court." The same procedure.
11 "You have the right to talk to a lawyer for advice
12 before we ask you any questions and to have a lawyer
13 with you during any questioning." And again the same
14 procedure. "If you cannot afford a lawyer one will
15 be appointed for you before any questioning if you
16 wish." Again I paused and waited for him to answer
17 yes, stating that he understood it. I then checked
18 the box next to it.

19 And then including that section I asked him:
20 "If you decide to answer questions now without a
21 lawyer present, you still have the right to stop
22 answering at any time. You also have the right to
23 stop answering at any time until you talk to a
24 lawyer." Again the same procedure was done where I
25 paused, waited for him to gesture, answer yes, that

1 he understood that, and I asked checked the box next
2 to it.

3 Q And did he indicate whether or not he understood his
4 rights?

5 A Yes. He did. He signed it.

6 Q And he signed it?

7 A And he signed it, yes.

8 Q At that point do you also do what's called a waiver
9 of rights?

10 A Right. That is the final section of this written
11 form. I read to him: "I have read this statement of
12 my rights and understand what my rights are. I am
13 willing to talk and answer questions. I understand
14 and know what I am doing. No promises have been made
15 to me and no pressure or coercion of any kind has
16 been used against me." I asked him if he understood
17 that. He stated yes. I then checked the box. He
18 indicated that he understood that section as well by
19 signing the bottom of it.

20 Q At any time when you advised him of his rights or
21 when he was waving his rights, did you threaten him
22 in any way?

23 A No, ma'am.

24 Q Did you promise him anything?

25 A No, I did not.

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- 1 Q Did he answer your questions coherently? Did he seem
2 to understand what was going on?
- 3 A Yes, he did.
- 4 Q At any point did he mention to you that he had been
5 threatened by Investigator Ewing?
- 6 A No, he did not.
- 7 Q And what kind of rapport did you have with Mr.
8 Middleton that day?
- 9 A He was cooperative. You know, we were talking. I
10 mean, he didn't seem to be upset at all.
- 11 Q Once he had completed State's Exhibit No. 3 which I
12 would hand up at this point, did he talk to you?
- 13 A Yes, he did.
- 14 Q At any time during your conversations with him, did
15 he ask for an attorney?
- 16 A No, he did not.
- 17 Q At any time did he tell you he didn't want to talk
18 any more?
- 19 A No, ma'am.
- 20 Q And again, were any promises made to him in exchange
21 for his statement?
- 22 A No, ma'am.
- 23 Q Tell the judge how you initiated questioning him
24 about the events that happened back in July?
- 25 A I asked him the question: "What can you tell me

1 about the shooting that occurred while you were at
2 ████████████████████ on July 14th at approximately
3 5 a.m.?" June 14th. It was a typo.
4 Q It should have been July 14th?
5 A Yes, ma'am.
6 Q And that was a typo in it?
7 A Yes, ma'am.
8 Q And did he in fact give you his version of events?
9 A Yes, he did.
10 Q Did he admit to his involvement in the shooting that
11 occurred on July the 14th?
12 A Yes, he did.
13 Q Did he indicate to you what type of weapon was used
14 in the shooting on July?
15 A Yes, he did. He indicated there was a shotgun used.
16 Q Specifically in a follow-up question, did you ask him
17 anything in reference to the murder as well as to the
18 shooting that happened in July?
19 A Yes, ma'am. I asked him: "Is the shotgun that was
20 used in the shooting on Greystone Boulevard at the
21 radio station the same shotgun that was used on
22 August 8th of 2005?
23 Q And how did he answer that question?
24 A He said yes.
25 Q Once you had typewritten out -- what time was that

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1 statement initiated?

2 A The statement, the advice of rights was given at
3 1820, 6:20 p.m., and the statement started at 1825,
4 five minutes later.

5 Q And you immediately -- your practice is to
6 immediately start reducing it to writing?

7 A Yes, ma'am.

8 Q Okay. Once you had typed out his entire statement,
9 was he given the opportunity to review it?

10 A Yes, he was.

11 Q And did you indicate whether or not he could change
12 anything if he wanted to?

13 A Yes, I did.

14 Q And did he choose to change anything in the
15 statement?

16 A No, he did not. As a matter of fact, I specifically
17 asked him, "Is there anything you would like to add
18 to the statement?" And he answered by saying, "I
19 want to apologize. I realize what happened was a
20 mistake. It wasn't supposed to go down like that.
21 I'm glad for his recovery. I wish that he could see
22 from my eyes that I didn't want nobody to get hurt."

23 Q Other than adding that paragraph at the end, did he
24 add anything else or change anything?

25 A No, he did not.

1 Q And did he acknowledge the statement in any way?

2 A Yes, he did. He signed it in two separate places on
3 each form, a total of eight times. Ten times if you
4 include the two times for the signing of the advice
5 of rights.

6 Q At any time while he was with you, did he complain of
7 any officers intimidating him or threatening him in
8 any way?

9 A No, ma'am.

10 Q Thank you, sir. Please answer any questions defense
11 may have.

12 THE COURT: Mr. Hisker.

13 CROSS EXAMINATION

14 BY MR. HISKER

15 Q Good afternoon.

16 A Good afternoon.

17 Q You knew at the time that he was also charged with
18 murder, correct?

19 A I knew that he was being -- he was deemed as a
20 primary suspect. I was out of the office when I got
21 the phone call from Captain Smith. We were running
22 down some leads in a totally different direction in
23 reference to the shooting on Greystone Boulevard.

24 Q And he was still at the Sheriff's Department when you
25 talked to him?

Walter S. McDaniels - Cross by Mr. Hisker (In Camera)

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- 1 A Yes, he was.
- 2 Q Do you know how long he had been at the Sheriff's
- 3 Department before you talked to him?
- 4 A No, I do not.
- 5 Q And at the end of the statement he shows remorse. He
- 6 is upset about this case, isn't he?
- 7 A About the shooting. Yes, sir.
- 8 Q So he was somewhat emotional?
- 9 A I mean, he apologized in his statement. It depends
- 10 on what you mean "emotional".
- 11 Q Well, emotionally upset about the situation.
- 12 A He showed remorse. I don't know if that's the same
- 13 as emotionally upset, if that's your definition. But
- 14 he apologized. He showed remorse in reference to
- 15 that through what he put in his statement.
- 16 Q And at that point, I mean, was he very forthcoming
- 17 immediately?
- 18 A Yes, he was.
- 19 Q You didn't even really have to ask him much at all?
- 20 A I wouldn't say that. I mean, I did have to ask him
- 21 questions specifically involving the shooting on
- 22 Greystone Boulevard.
- 23 Q But you just mentioned the shooting at Greystone
- 24 Boulevard and he started telling you everything?
- 25 A Pretty much.

1 Q That's all I have.

2 MS. CAMPBELL: One other.

3 REDIRECT EXAMINATION

4 BY MS. CAMPBELL

5 Q Was anybody else with you while you were taking the
6 statement from the defendant?

7 A Yes. Captain Smith was present.

8 Q Captain Stan Smith?

9 A Captain Stan Smith.

10 Q Thank you.

11 THE COURT: There is a written second statement,
12 a third statement?

13 Q I'll get to that, Your Honor. I show you what has
14 been marked as State's Exhibit No. 4. Do you
15 recognize this?

16 A Yes, I do.

17 Q And is that in fact the statement that you and
18 Captain Smith took from Octavia Middleton?

19 A Yes, it is.

20 MS. CAMPBELL: Your Honor, at this time I'd hand
21 it up.

22 (Document handed to the Court)

23 MS. CAMPBELL: That's all we'd have, Your Honor.

24 THE COURT: You may come down, Mr. McDaniels.

25 WITNESS: Thank you.

Walter S. McDaniels - Redirect by Ms. Campbell (In Camera)

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1 **THE COURT:** Next witness.

2 **MS. CAMPBELL:** Captain Smith.

3 JAMES S. SMITH, after being duly sworn,
4 testifies as follows:

5 **THE CLERK:** Thank you. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 **WITNESS:** James S. Smith.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL**

11 **Q** Captain Smith, where are you employed?

12 **A** Richland County Sheriff's Department.

13 **Q** What do you do there, sir?

14 **A** I'm in the investigative division and I'm in charge
15 of the major crime unit.

16 **Q** I want to turn your attention back to August the 11th
17 of 2005. Did you become involved in an investigation
18 involving a shooting that happened over on Greystone
19 Boulevard in July of that year?

20 **A** Yes, ma'am. I had been involved in it since the
21 original incident.

22 **Q** And who was the lead investigator in that case?

23 **A** It was Sergeant McDaniels.

24 **Q** On August 11th did you have an occasion to contact
25 Sergeant McDaniels?

- 1 A I did.
- 2 Q And why was that, sir?
- 3 A We had developed information as to the identifies of
4 the people involved in that shooting. There was
5 actually an arrest in a related case. We had got
6 some information as a result of that, specifically
7 that Octavia Middleton was involved in it.
- 8 Q And as such, did you get Investigator McDaniels, or
9 Sergeant McDaniels now, to come in and interview the
10 defendant?
- 11 A Yes.
- 12 Q Did you participate in that interview in any way?
- 13 A Yes. I came in. My notes I think reflect it
14 accurately. He had already initiated the interview
15 with the defendant when I came into the room. He had
16 already been advised of his rights. And I came into
17 the room at that time I think a few minutes
18 afterwards. And I participated in the actual written
19 statement.
- 20 Q And what was the defendant's demeanor like that day?
- 21 A He was somber, you know, forthcoming, very matter of
22 fact about what had taken place.
- 23 Q At any time that you were in the room, did he ask for
24 a lawyer?
- 25 A No, ma'am.

James S. Smith - Direct by Ms. Campbell (In Camera)

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- 1 Q At any time while you were in the room, did he tell
2 you he didn't want to speak any more?
- 3 A He did not.
- 4 Q At any time while you were in the room, did he
5 complain of anyone threatening him or pressuring him
6 into giving a statement?
- 7 A No, ma'am.
- 8 Q Did he appear coherent or understanding of what you
9 were saying?
- 10 A Yes. He was very coherent.
- 11 Q Were you there when there were some follow-up
12 questions about what had happened?
- 13 A Yes.
- 14 Q Specifically, a question about the rifle that was
15 used?
- 16 A About the shotgun. Yes, ma'am.
- 17 Q The shotgun. Excuse me. And were you also there
18 when he was given the opportunity to add something
19 and he added his I am sorry?
- 20 A Yes. I was there for the entire statement. And I
21 believe I witnessed it.
- 22 Q At any time during the course you were there, did he
23 cease to cooperate?
- 24 A No, ma'am.
- 25 Q At any time did he ask for a lawyer?

1 A No, ma'am.

2 Q And at any time did he tell you he didn't want to
3 talk any more?

4 A He did not.

5 Q At any point did he complain about any behavior about
6 any of the officers at the Sheriff's Department or
7 being threatened by anyone?

8 A No, ma'am, he did not.

9 Q Thank you. I have nothing further.

10 CROSS EXAMINATION

11 **BY MR. HISKER**

12 Q Good afternoon, Captain Smith.

13 A Good afternoon, Mr. Hisker.

14 Q I want to go back to your notes. You initially --
15 you did participate in the interview of Harry Dukes,
16 too, didn't you?

17 A I had. Yes, sir.

18 Q So there were multiple investigators talking to each
19 of these individuals?

20 A I might have been the floater, if you will. I think
21 Holdorf was talking to Dukes primarily. I think
22 Ewing was originally talking to Middleton. The
23 previous day there had been a separate arrest
24 involving a co-defendant, and I had been involved
25 with Ewing I think on some of that. So I might have

James S. Smith - Cross by Mr. Hisker (In Camera)

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1 been the common denominator to a point. But as far
2 as multiple, you know, per each defendant.

3 Q Well, if Ewing went and he talked to Dukes and Ewing
4 went and talked to Middleton, I mean, it's fair to
5 say that --

6 A Well, Ewing talked to Middleton and Ewing was the
7 case officer at the time. So quite naturally he
8 would be talking to every one of them.

9 Q Right. And sometimes he'd have another investigator
10 with him?

11 A Yes.

12 Q And sometimes you would actually step in?

13 A Occasionally. Yes, sir.

14 Q And participate in the interview?

15 A Yes, sir.

16 Q You heard Investigator Ewing's testimony about the
17 form stating that you were not present?

18 A I wasn't present -- I believe your question was about
19 Middleton. He didn't -- I think it was about whether
20 I was present with regard to Middleton, during that
21 portion of the statement. I wasn't present with
22 Middleton until later.

23 Q Right. And that was done in your office.

24 A With McDaniels it was done in my office later.
25 Correct.

- 1 Q So that's a different incident?
- 2 A Yeah. I wasn't involved in the statement from
3 Middleton that you were questioning the chief about.
- 4 Q Right.
- 5 A I didn't become involved with Middleton until
6 Sergeant McDaniels was involved with him.
- 7 Q And you have no way of telling whether or not any
8 other investigators spoke with Mr. Middleton, do you?
- 9 A At which point in time?
- 10 Q At any given time that you're not there, you don't
11 know exactly when an officer speaks with a suspect?
- 12 A I would know it -- I mean, there would be no reason
13 that I would know it soon thereafter if another
14 investigator -- Ewing was the chief investigator.
- 15 Q Right.
- 16 A He was interviewing Middleton. There would be no
17 reason for anybody else to go to Middleton after
18 Ewing had spoken to him, especially since he invoked.
19 That wouldn't happen.
- 20 Q Well, how would the other officers know not to go
21 speak with him?
- 22 A Well, they would have no reason to. If the case
23 officer put him in the holding cell, there would be
24 no reason for anyone else to go initiate contact with
25 him. The holding cell is an isolated area. You

James S. Smith - Cross by Mr. Hisker (In Camera)

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- 1 don't pass by it routinely, you know. It's around a
2 corner. So you have to be alerted to go there or
3 you'd have to have a specific reason to go there.
4 One of my detectives wouldn't just say, well, you
5 know, Ewing didn't have any luck with him, let me go
6 take a shot at him when it's not his case.
- 7 Q But it's right outside of CID, right?
- 8 A It's down the hall around the corner. Yes, sir.
- 9 Q When you went to speak with Mr. Middleton with
10 Investigator McDaniels, do you know how long Mr.
11 Middleton had been at the Sheriff's Department?
- 12 A I can answer that. I think they were actually
13 executing the search warrants and the arrests around
14 midday. I have in my notes at 1:15 Faust,
15 Investigator Faust had called from the scene of this
16 Carnegie Street/Middleton search warrant. So they
17 were there by 1:15. So if I came into the interview
18 at 6:25, which is what my notes reflect, that's less
19 than five hours.
- 20 Q But you have no notes about Mr. Middleton having
21 anything to eat?
- 22 A Not in my notes, no. I have something in my notes
23 about a co-defendant getting something to eat,
24 because I'm the one that did it.
- 25 Q All right. So there's really no way to say whether

1 Mr. Middleton was comfortable and clear thinking at
2 that time?

3 A Well, that's not an excessive period of time, you
4 know, be to in custody. That's reasonable. Four or
5 five hours certainly is reasonable.

6 Q How long were you involved in the interview with
7 Investigator McDaniels?

8 A 'Til the point in time of the culmination of the
9 statement, because I think I witnessed the statement.
10 So from that point. And my notes reflect that he had
11 already verbally admitted his involvement in the
12 first shooting and then from that point until the
13 culmination of the statement.

14 Q But you weren't there through the actual question and
15 answer session?

16 A Yes. I was there during that session. But again, he
17 had advised him of his rights I think before I came
18 into the room and there had been some initial verbal
19 acknowledgments before I came into the room.

20 Q No further questions. Thank you.

21 REDIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 Q Just a couple of questions. Captain, are you aware
24 that Officer Ewing had offered him food or drink if
25 he wanted it?

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1 **A** I have not reviewed Ewing's notes. But that does not
2 -- and the reason why I had secured a meal for Teran
3 Scott, I was involved in actually picking him up that
4 morning from the detention center myself.

5 **MS. CAMPBELL:** That's all we have, Your Honor.

6 EXAMINATION

7 **BY THE COURT**

8 **Q** Let me ask Captain Smith. The first advice of rights
9 was at 12:41. And the second statement, written
10 statement, was taken at 6:25. So it's about six
11 hours, just according to what I've seen in front of
12 me. I'm not raising that as any issue.

13 **A** Yes, sir.

14 **Q** I'm just trying to put things in perspective. You
15 say you were in the room when Sergeant Ewing -- I
16 understood a verbal statement, you were there. You
17 were present for that?

18 **A** With regard to Middleton?

19 **Q** Yes.

20 **A** No, sir. McDaniels was --

21 **Q** I mean -- no. Let's go back.

22 **A** I was not present --

23 **Q** This defendant --

24 **A** Yes, sir.

25 **Q** -- I thought you said you were present?

1 A During the 6:25 statement. Yes, sir.

2 Q Okay. You were not present at the noon time
3 statement?

4 A No, sir.

5 Q Oh, okay.

6 A And the reason why, just to advise Your Honor, the
7 reason why I said 1 approximately 15, that's the
8 first entry in my notes of a time involving arrest.

9 Q I'm not quarreling with or questioning the time that
10 you got involved.

11 A Yes, sir.

12 Q I'm just trying to find out when you were involved.

13 A Yes, sir.

14 Q So you were not involved with this defendant until
15 somewhere in the 6:20, 6:30 range?

16 A That's correct.

17 Q And had you not seen him before that?

18 A I can't say I hadn't seen him. But I had not been
19 involved in any interviews with him.

20 Q Now, at the interview or the discussion that took
21 place in your presence that resulted in this later
22 statement, was there any discussion of the Faraway
23 Drive incident during that discussion?

24 A Yes, sir.

25 Q All right. What was the extent of that?

1 A Specifically as it pertained to the common
2 denominator, shotgun, between both. That was the
3 major -- that was about the only discussion, but that
4 was significant. Because the question was, was this
5 the same weapon that was used on the August 8th
6 incident which was indeed the murder. And that
7 was --

8 Q August the 8th?

9 A Yes, sir.

10 Q So Faraway Drive was mentioned?

11 A To the extent as it pertained to the shotgun; yes,
12 sir.

13 Q And I haven't read these statements.

14 A Yes, sir.

15 Q Was there an admission to that effect?

16 A The question was specifically: "Was that the same
17 weapon or the shotgun that was used on the August 8th
18 incident?" And there was an acknowledgment that it
19 indeed was.

20 Q And that was after he had been readvised of his
21 Miranda rights?

22 A Correct.

23 Q Thank you. Anything further?

24 MS. CAMPBELL: No, sir.

25 THE COURT: All right.

1 **MS. CAMPBELL:** That's all we have as to the
2 statements, Your Honor, although I don't know if he
3 wants to put his client up on that.

4 **MR. HISKER:** No, Your Honor. That's all I have.

5 **THE COURT:** Anything further?

6 **MR. HISKER:** No, Your Honor.

7 **THE COURT:** All right, Mr. Hisker. You are
8 arguing I assume these -- well, you tell me what your
9 position is with regard to statement number one,
10 statement number two and statement number three. And
11 I'm only identifying statement number one as that
12 which we discussed earlier about the three comments
13 that were made or discussions that were held about
14 him not being there, that the blood was not on his
15 shirt and those shotgun shells belonging to a third
16 person. That's what I'm referring to as the first
17 statement. So you may proceed.

18 **MR. HISKER:** Well, Judge, my argument as to all
19 of the statements we have, it's my position that the
20 only evidence before the court is Mr. Middleton's
21 testimony that he was reinterrogated by other
22 officers while he was in D cell. There has been no
23 showing by any of these officers --

24 **THE COURT:** In the D cell?

25 **MR. HISKER:** When he was in the D cell he was

1 contacted by officers. Now, the case law is that
2 once a defendant invokes, he cannot be interrogated
3 unless he initiates it. However, if the police
4 initiate it by making statements that are calculated
5 to generate an incriminating response, then the
6 police officers then, that's considered
7 interrogation. It's our position that Mr. Middleton
8 was interrogated while he was in D cell after he was
9 interrogated which would be a violation of Miranda.

10 **THE COURT:** After he invoked.

11 **MR. HISKER:** Yes. But that's the only evidence.
12 And there is no evidence to the contrary that Mr.
13 Middleton was not contacted by other officers. Now,
14 we have no way of showing what officers, but the
15 State has presented no proof whatsoever that other
16 officers did not do it.

17 The fact is that many of these officers know
18 what's being investigated. The officers were in and
19 out of specific interrogations. It could have been
20 very easily that another officer innocently went by
21 to speak with Mr. Middleton not knowing that he had
22 invoked. But the warnings were not issued.

23 Let's go to the first written statement, the
24 second statement. There were no Miranda warnings
25 given before that statement. And it's my position,

1 the second position is that once he invokes, they
2 should have readvised him of his Miranda rights to
3 see if he would again waive those. Because he
4 invoked. They called an attorney. They have no way
5 of knowing what happened to Mr. Middleton between the
6 first interview and the second interview. And at
7 that point they should have readvised him of his
8 rights and got a voluntary waiver, which they did not
9 do.

10 Now, the statements say at the top they have the
11 advice of rights on the statement. But the witnesses
12 agree that that was not presented to Mr. Middleton
13 until after the entire interrogation because that is
14 presented when the form is actually printed up and
15 then he signs it.

16 **THE COURT:** But he did sign it.

17 **MR. HISKER:** He did sign it. But that was after
18 interrogation. And there is case law that states
19 that oral interrogation, you cannot orally
20 interrogate a person and get a confession and then
21 advise them of their rights. The advice of rights
22 has to occur first because there was actually a
23 practice involved where you interrogate someone, get
24 a confession, at that point there is no way they can
25 change their story. Then you read them their rights;

1 they have no choice but to waive them. And that's
2 just a preprinted form. It's not even the same form
3 that he checked initially.. So at that point he
4 should have been readvised of his rights.

5 The third argument I would make relates to
6 voluntariness of his confession. He was interrogated
7 for approximately six hours. There is no question
8 about whether or not he needed any food. There is no
9 notes about whether or not he was given water. He
10 was sat in a room. He was interrogated. He asked
11 for an attorney. The officers continued to speak
12 with him. And at that point his will was overborne.
13 He said whatever he had to say, and at that point he
14 believed that his co-defendants were implicating him
15 and that he was going to get a murder charge if he
16 did not tell the officers and cooperate.

17 **THE COURT:** Do they have to tell the truth?

18 **MR. HISKER:** Sir?

19 **THE COURT:** Do the officers have to tell the
20 truth to the defendant?

21 **MR. HISKER:** No. I don't believe they --

22 **THE COURT:** Do they have to tell him everything?

23 **MR. HISKER:** No. I don't believe the officers
24 have to tell him the truth. I believe the officers
25 can trick him. But I don't think the officers can

1 continue to tell him anything once he invokes his
2 right to counsel.

3 **THE COURT:** Ms. Campbell.

4 **MS. CAMPBELL:** May it please the Court, Your
5 Honor. Based on the credible testimony in the case,
6 I think it's unequivocal that the defendant invoked
7 his right which was duly noted, and the officers did
8 the correct thing at that point and put him in the D
9 cell. He initiated, Your Honor.

10 And there has been much testimony about where
11 this D cell is. It's in a remote part according to
12 Captain Smith where not just everyone happens by. In
13 fact Sergeant Barnes testified that he happened to
14 hear banging on the cell and then went and searched
15 it out in order to find out what the problem was or
16 if there was a problem with the defendant in the D
17 cell. And at that point is when he is approached by
18 this defendant saying he wants to talk.

19 There has been absolutely no credible evidence
20 of any of these unknown officers who supposedly are
21 the ones in there interviewing Harry Dukes. And that
22 would be Captain Smith, I believe Investigator
23 Holdorf and Ewing. He says two officers that had
24 interviewed him. Well, there aren't simply enough
25 officers left because it wasn't Sergeant Ewing and it

1 wasn't Captain Smith. And I can get Investigator
2 Holdorf in here, Your Honor. And I can submit as an
3 officer of the court he's going to say he made no
4 contact with Octavia Middleton. In addition to that,
5 Your Honor, --

6 **THE COURT:** Where is he?

7 **MS. CAMPBELL:** I can get him here. I just
8 didn't anticipate his story. To make the record
9 clean, maybe I should.

10 **THE COURT:** Is the record --

11 **MS. CAMPBELL:** Assuming that, Your Honor, there
12 has been no credible testimony that anyone initiated
13 any contact that would have been able to be, you
14 know, waving around Harry Dukes' statement. The
15 defendant is familiar with how everything works. He
16 did actually assert his right, which to me goes to
17 show he understood what his rights were and made a
18 choice after contemplating things and whether or not
19 he wanted to get his version out, Your Honor.

20 And even in his statement he says that he
21 doesn't want to take the murder rap. So in his mind
22 he had a very good reason for initiating contact with
23 the police again, because he wants to make sure his
24 version of the events, just as he did here today,
25 comes out and that it gets down on paper at the time,

1 Your Honor.

2 Subsequent to that he also talks to police
3 officers. And again, I think what makes them very
4 credible, they readvise him because it's a different
5 case at the point. He has been in custody for about
6 five or six hours I think at that point.

7 **THE COURT:** Well, Mr. Hisker, your argument goes
8 only to the first statement, does it not? Or does it
9 go to both statements?

10 **MR. HISKER:** It's tied to both statements. It's
11 my --

12 **THE COURT:** There's a re-advisement before the
13 second written statement. I mean, I can understand
14 your position as to voluntariness. And the fact he'd
15 been there six hours, whether he had food or drink I
16 don't know. But as far as his invocation, doesn't
17 the second advice of rights cure that?

18 **MR. HISKER:** Yes, sir.

19 **THE COURT:** That's what I thought.

20 **MR. HISKER:** Yes, sir.

21 **THE COURT:** So the second one, other than the
22 voluntariness issue, I guess that's the only issue as
23 to the second written statement.

24 **MR. HISKER:** Yes, sir. It does. And I think
25 that's good to point that out because it shows that

1 another investigator comes in and immediately does
2 another advice of rights before another
3 interrogation.

4 **THE COURT:** And that was in relation to a
5 separate crime, too, which is different. I mean,
6 under the case law, that fact that it is a separate
7 crime cures any prior invocation.

8 **MR. HISKER:** Well, Judge, I don't know if I
9 agree with the separate crime analysis. Based on
10 somebody that's being interrogated, it could very
11 well be that -- both of these incidents involved the
12 same participants, the same weapon. It could be very
13 well that this could be treated as a continuing
14 course of conduct, at least in the mind of the person
15 being interrogated, that he is being interrogated for
16 the exact same offense or the exact same series of
17 events that it started out as, and he was still given
18 another advice of rights.

19 **THE COURT:** Well, I think I've got case law and
20 I think it's reliable that the second written
21 statement preceded by the advice of rights as to a
22 second separate crime, that's the way it started.
23 The fact that the August the 8th crime was brought
24 into that discussion -- and that's why I wanted to
25 find out from Captain Smith whether there was any

1 admissions with regard to the August 8th crime given
2 after the second advice of rights. That was my
3 purpose in that inquiry.

4 **MR. HISKER:** Yes, sir, Judge. The only other
5 thing that I would ask you to consider is, after Mr.
6 Middleton invoked his right to counsel, I think that
7 is a very tell-tale sign. Investigator Ewing picks
8 up the phone and attempts to call a lawyer. Now,
9 what he was attempting to accomplish by that I don't
10 know. I mean, was he going to hand the phone to Mr.
11 Middleton?

12 And even that sign of attempting to call an
13 attorney for him in that context to me just tells me
14 that they are still intending to interrogate him,
15 that they want to show him that they're going to call
16 an attorney for him and that he should go ahead and
17 talk to them.

18 At that point all contact should have ceased.
19 And even the picking up the phone and saying I'm
20 going to call your lawyer for you is improper. They
21 should have immediately got up and left the room.

22 **THE COURT:** All right. Do you intend to call
23 another witness?

24 **MS. CAMPBELL:** Yes, sir. He should be -- he is
25 on the way. Just to clear the record.

James S. Smith - Questions by the Court (In Camera)

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1 **THE COURT:** All right. Let me -- well, let's
2 take about a ten-minute break. Let me review these
3 statements, and we'll stand at ease for about ten
4 minutes.

5 (Whereupon, a break is taken)

6 **THE COURT:** All right. Anything further from
7 the State?

8 **MS. CAMPBELL:** May it please the Court?

9 **THE COURT:** Yes, ma'am.

10 **MS. CAMPBELL:** The State would call Investigator
11 Holdorf.

12 **TRAVIS HOLDORF,** after being duly sworn,
13 testifies as follows:

14 **THE CLERK:** Thank you. Please have a seat in
15 the witness stand and state your name for the record,
16 and please spell your last.

17 **WITNESS:** Travis Holdorf.

18 **THE CLERK:** Can you spell your last name,
19 please.

20 **THE WITNESS:** H-O-L-D-O-R-F.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Investigator Holdorf, where are you employed?

24 **A** The Richland County Sheriff's Department.

25 **Q** What do you do there, sir?

- 1 A I'm an assault and also an arson investigator for the
2 Sheriff's Department.
- 3 Q I want to turn your attention back to August the 11th
4 of 2005. Did you become involved in the interview of
5 one of three co-defendants that day?
- 6 A I did.
- 7 Q And who did you actually make contact with?
- 8 A Harry Dukes.
- 9 Q When you made contact with Mr. Dukes, where did this
10 take place?
- 11 A It was in -- it's now Sergeant Omara's office in CID,
12 one of the sergeants' offices.
- 13 Q So at the Sheriff's Department?
- 14 A Yes, ma'am.
- 15 Q And prior to doing any questioning with him, did you
16 actually advise him of his rights?
- 17 A Yes, ma'am, I did.
- 18 Q And I want to show you this form, ask you first, do
19 you recognize that?
- 20 A Yes, ma'am.
- 21 Q And tell the judge what that is?
- 22 A It's our written advice of rights form. It has the
23 rights here and the waiver. I have check marks. As
24 you read them off to the defendant, you check them
25 off. And then down here as you read the waiver, you

Travis Holdorf - Direct by Ms. Campbell (In Camera)

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1 check that off. It's signed by him, myself and
2 Sergeant Ewing.
3 Q And this is a copy of the actual original?
4 A Yes, ma'am.
5 Q And whose writing is that here up at the top?
6 A That's my handwriting.
7 Q And who actually witnessed the signature of the
8 defendant?
9 A Sergeant Ewing.
10 Q And who else?
11 A Myself.
12 **THE COURT:** What defendant?
13 **MS. CAMPBELL:** Harry Dukes.
14 **THE COURT:** Is this person also named Boo?
15 **MS. CAMPBELL:** Yes. Boo. Sorry. He is "Tank".
16 This is Boo.
17 Q What time is noted that you advised him of his rights
18 that day?
19 A At 1330 hours, 1:30 in the afternoon.
20 Q During the course of that afternoon, did Mr. Dukes
21 give you some information about the shooting that
22 took place on Faraway Drive --
23 A Yes, ma'am.
24 Q -- three days before? And I'm going to show you the
25 second item and ask if you recognize that?

1 A Yes, ma'am. That's a statement I took from Harry
2 Dukes.

3 Q Let me get this marked real quick.

4 (WHEREUPON, State's Exhibit No. 5 is marked for
5 identification.)

6 (WHEREUPON, State's Exhibit No. 6 is marked for
7 identification.)

8 Q For I.D. purposes. And, Your Honor, I would hand up
9 the interrogation form with the time on it. Prior to
10 reducing anything into writing, did you have
11 discussions with Mr. Dukes as far as oral statements
12 and things of that nature?

13 A Yes, ma'am.

14 Q And then I show you State's Exhibit No. 6 for I.D.
15 purposes. Do you recognize -- what time did you
16 actually initiate the written statement in this case
17 with Mr. Dukes?

18 A We started at 2:35.

19 Q 2:35?

20 A Yes, ma'am.

21 Q So you advised him of his rights around 1:30, and
22 then about an hour later?

23 A Yes, ma'am.

24 Q And do you know approximately how long it took you to
25 reduce that to writing and to have him acknowledge it

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- 1 and all that?
- 2 **A** A two-page statement, usually about 45 minutes to an
- 3 hour.
- 4 **Q** Who was present while the statement with Mr. Dukes
- 5 was being given?
- 6 **A** Sergeant Ewing.
- 7 **Q** And you?
- 8 **A** Yes, ma'am.
- 9 **Q** And as far as other than Captain Smith maybe dropping
- 10 in, did anybody else actually conduct the interview
- 11 that day?
- 12 **A** No, ma'am.
- 13 **Q** Once State's Exhibit 6 was signed off on by Mr.
- 14 Dukes, and he was given the opportunity to change
- 15 anything, what happened to the statement itself, Mr.
- 16 Dukes' statement with his signature on it?
- 17 **A** It would have stayed with Sergeant Ewing.
- 18 **Q** It was given directly to Sergeant Ewing?
- 19 **A** Yes, ma'am.
- 20 **Q** Not to any other unknown investigator?
- 21 **A** No, ma'am.
- 22 **Q** And Sergeant Ewing, as the case officer, what would
- 23 he have done with it?
- 24 **A** Put it in the case file.
- 25 **Q** Did you at any point go and visit Mr. Octavia

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1 Middleton in the D cell that afternoon?

2 **A** No, ma'am.

3 **Q** At any point did you show Octavia Middleton Harry
4 Dukes' statement and wave it around in his face?

5 **A** No, ma'am.

6 **Q** And did you have any real contact with Octavia
7 Middleton that afternoon?

8 **A** No, ma'am.

9 **Q** And the other person that took the statement with you
10 was Sergeant Ewing?

11 **A** Yes, ma'am.

12 **MS. CAMPBELL:** Thank you. I don't think I have
13 anything else, Your Honor.

14 **THE COURT:** Mr. Hisker.

15 CROSS EXAMINATION

16 **BY MR. HISKER**

17 **Q** Good afternoon, Investigator Holdorf.

18 **A** Hello, sir.

19 **Q** Did you have any contact with Mr. Middleton at all
20 that day?

21 **A** I do not recall seeing Mr. Middleton at all. No,
22 sir.

23 **Q** When were you -- when did you first meet Mr. Dukes?

24 **A** When he was back at headquarters.

25 **Q** At headquarters? And --

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- 1 **A** There was a search warrant earlier. I think it may
2 have been first there. He was taken from the
3 location of the search warrant to headquarters and
4 after finishing up the search warrant then went back
5 to headquarters.
- 6 **Q** And who brought him from the scene to headquarters?
- 7 **A** I think it was Investigator Faust or maybe Sergeant
8 Ewing. I'm not 100 percent. I wasn't the police
9 officer.
- 10 **Q** But you weren't at the search warrant?
- 11 **A** I was at the search warrant; yes, sir.
- 12 **Q** You were there when the search warrant was executed.
13 Did anybody talk to Mr. Dukes while they were
14 executing the search warrant?
- 15 **A** It was very brief, if anything. Nothing that I
16 recall; no, sir.
- 17 **Q** But it's very possible that investigators talked to
18 people who had the search warrant?
- 19 **A** Yes, sir. It's possible.
- 20 **Q** And when you conducted your interview of Mr. Dukes at
21 headquarters, where did that interview take place?
- 22 **A** Back corner office.
- 23 **Q** The corner office. Now, describe that. Is that a
24 cubicle situation?
- 25 **A** It's not a cubicle situation. It probably at one

1 point in time was a closet that they have turned into
2 an office.

3 Q Is it fairly open to the other investigators' area?

4 A It's right along the main row. Yes, sir.

5 Q And you don't have any procedures to separate an
6 inmate from other investigators once they've invoked
7 their right to counsel, do you?

8 A I'm not sure.

9 Q Well, if a suspect requests to speak with an attorney
10 and is put in a room, there is no way to tell other
11 investigators not to go interrogate that suspect, is
12 there?

13 A If it's your case, you would know that he asked for
14 an attorney. No one else would be interrogating
15 your -- someone on your case.

16 Q But people talk to people while they're executing a
17 search warrant at will, right?

18 A If they're not in custody; yes, sir. Or even if they
19 are in custody. I mean, if you've got a search
20 warrant; yes, sir.

21 Q But there is no way, there are no procedures to keep
22 a suspect from interrogation once he's invoked?

23 A If it's your case, typically on an ideal situation,
24 the person advising them of the rights would be the
25 case officer. No one else would have reason to talk

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- 1 to that person once he has invoked except for the
2 case officer.
- 3 Q Well, you were talking to Mr. Dukes before
4 Investigator Ewing came in, weren't you?
- 5 A Yes, sir.
- 6 Q You had actually -- it's in the notes you developed a
7 rapport with him before Investigator Ewing got
8 involved?
- 9 A Yes, sir.
- 10 Q So you had contact with Dukes even though you were
11 not the case agent?
- 12 A I was just helping him out on the case.
- 13 Q So you do help out occasionally on a case?
- 14 A Yes, sir.
- 15 Q Without the direction of the case agent?
- 16 A I can bring it up to a point, but as far as taking
17 any type of questioning with knowledgeable facts
18 about the case; no, sir. You can start talking to
19 them to explain to them that, you know, look, you
20 need to let us know what you know type of thing. But
21 it's pretty limited without the case officer being
22 there.
- 23 Q Right. But it's very possible that you can go ask
24 somebody, you need to tell us what you know?
- 25 A It's possible. Yes, sir.

1 Q Thank you. No further questions.

2 REDIRECT EXAMINATION

3 **BY MS. CAMPBELL**

4 Q To your knowledge did you or anyone else go and take
5 Harry Dukes statement into a D cell to Octavia
6 Middleton that afternoon, the statements you took
7 from Harry Dukes?

8 A No.

9 Q And to your knowledge did anyone else take any other
10 statements from Harry Dukes that afternoon?

11 A No.

12 Q Thank you.

13 **THE COURT:** Thank you very much, sir. All
14 right.

15 **MR. HISKER:** Judge, unless the State has
16 anything further, I mean, I think that Investigator
17 Holdorf's statement tells the situation, that these
18 investigators do from time to time help out on cases.
19 They can go briefly in and ask somebody whether or
20 not they need to tell somebody, they need to tell
21 their side of the story.

22 And Mr. Middleton never alleged a long
23 interrogation. He alleged that two officers came
24 into his cell, presented something with Harry Dukes'
25 name on it and told him he needed to cooperate.

1 And --

2 **THE COURT:** The police officer just said it
3 wasn't him.

4 **MR. HISKER:** No. This officer just said it
5 wasn't him. But we have no way of saying who it was.
6 But all we know is Mr. Middleton's testimony that it
7 did happen, and the Sheriff's Office has no procedure
8 to prevent it from happening. We know there were
9 several officers in and out of every interrogation.
10 There is not an interrogation that we've heard of yet
11 where both officers started it and finished it at the
12 same time. At one time another investigator will
13 come in and an investigator will leave.

14 We've also had Chief Deputy Wilson. We've had
15 Investigator Lindler (sic) mentioned in these
16 interrogations. Even Investigator Barnes knew about
17 the subject of these interrogations. He knew that
18 there was a shooting. He knew that Investigator
19 Ewing was investigating it. These investigators know
20 what's going on. And I don't think it would -- it's
21 not our position that any one of these officers
22 purposefully went to Mr. Middleton after he invoked
23 and tried to interrogate him knowing that he invoked.

24 **THE COURT:** You can interpret Mr. Middleton's
25 testimony that way. You could interpret Mr.

1 Middleton's testimony that way.

2 **MR. HISKER:** You could. But it also could be
3 interpreted that some investigator while helping out
4 on the case, as Investigator Holdorf said they do,
5 just go in to speak with a suspect. There is not a
6 procedure to prevent Mr. Middleton from speaking with
7 other investigators. Just the fact --

8 **THE COURT:** Except he's in a cell.

9 **MR. HISKER:** Well, also, Judge -- that's
10 correct. He is in a cell. But even Investigator
11 Barnes had the access to go into that cell. He could
12 have said anything he wanted to to Mr. Middleton. He
13 opened the cell. He went right in. Mr. Barnes could
14 have a conversation. I'm not saying that he did
15 because he said that he didn't. But if Investigator
16 Barnes could have, any investigator could have.

17 **THE COURT:** Well, then it comes down to
18 credibility.

19 **MR. HISKER:** Yes, sir. And the only testimony
20 we have would be Mr. Middleton's testimony that it
21 did happen. And the tell-tale sign of that, Judge,
22 is Investigator or Chief Wilson's -- I mean, not
23 Wilson's -- Chief Ewing's testimony that he picked up
24 that telephone and called an attorney. And I think
25 you have to ask, what was his intentions when he did

1 that? When he picks up that phone, does he think
2 that the attorney is going to tell him to confess to
3 a murder?

4 My position is that that very call, picking up
5 that phone in Mr. Middleton's presence to try to get
6 an attorney can only come out two ways. Either the
7 attorney is going to tell him to keep his mouth shut
8 or the attorney is going to say I don't represent
9 him. And at that point what you have is a situation
10 where the investigator has called, that lawyer
11 doesn't say he represents you, now you need to talk
12 to us. That's the only two ways that could have
13 happened.

14 **THE COURT:** All right. What's the State's
15 position?

16 **MS. CAMPBELL:** I beg to disagree with him.
17 There is a case in the last two to three weeks where
18 in fact the attorney was contacted at the defendant's
19 request. The attorney consulted and then advised him
20 to cooperate. And to say that an attorney would
21 never let his client cooperate is simply ludicrous.
22 In addition to that, Your Honor, every bit of
23 testimony --

24 **THE COURT:** Well, it didn't happen, so we don't
25 know.

1 **MS. CAMPBELL:** That's true. And what the
2 purpose is, I don't know how this is really relevant.
3 He's trying to get his lawyer to talk to him. He's
4 trying to comply with the defendant's request. And
5 somehow that's to be used against him? Anyway, Your
6 Honor, he wasn't able to contact the attorney. I
7 think the testimony to that is the same from both the
8 State and the defense.

9 Your Honor, basically, too, as far as you said,
10 you know, it boils down to credibility. And we
11 submit that the credible evidence before you is that
12 it happened exactly as the police testified, that he
13 did initiate. Very simply, his scenario, I don't
14 know how Sergeant Barnes meandered by with his coffee
15 cup is simply contradicted fully by Sergeant Barnes
16 at that point. Not that that's a big point, Your
17 Honor, but it is a point as far it goes to
18 credibility.

19 He has gotten up here and tried to manufacture
20 some way of saying that these two unknown people who
21 didn't even have access to the statement, they found
22 some piece of paper which they purported to have
23 Harry Dukes' statement on it, signature on it, and
24 walked into the D cell randomly.

25 Your Honor, in this case, every person that came

1 in contact with these defendants does a follow up or
2 denotes it on a statement. It's documented. There
3 is absolutely no indication that any of these unknown
4 investigators who suddenly are none of the ones
5 present here in the courtroom went and made any
6 contact with the defendant, or I submit the credible
7 evidence.

8 Your Honor, the testimony that is credible is
9 that Sergeant Ewing at the time did what he was
10 supposed to, that when the defendant indicated he
11 wanted a lawyer, he quit interrogating him, unlike
12 what the defendant said. He quit talking to him or
13 anything. He put him into a D cell. And it's not
14 until sometime later when the defendant has
15 contemplated what's going on that he decides it's in
16 his best interest to make sure he is not the shooter.

17 That's when he starts banging on the D cell
18 which is down the hall around the corner, so much so
19 that Sergeant Barnes walks down there just to find
20 out what's going on. And then it proceeds as it
21 does, Your Honor.

22 I simply say that it is incredible to think that
23 any two random investigators would walk into another
24 investigator's defendant and start waving sheets of
25 paper around at him. And we agree, Your Honor; I

1 think it is just a credibility issue.

2 **THE COURT:** You said you had some case law you
3 wanted to present?

4 **MS. CAMPBELL:** Yes, Your Honor.

5 **THE COURT:** Just tell me what it is.

6 **MS. CAMPBELL:** State vs. Binney.

7 **THE COURT:** What's that say? Binney?

8 **MS. CAMPBELL:** Binney, B-I-N-N-E-Y. It's 608
9 s.e.2d 418. It talks about Edwards. "In addition, a
10 criminal suspect's rights are not violated when the
11 suspect, not the police, initiates further
12 communication, exchanges or conversations with the
13 police."

14 It quotes State vs. Howard. "The court has held
15 that after it has been determined that the waiver was
16 valid; in other words, they initiated it, the
17 analysis is over." It does not mention that anyone
18 has to be readvised or anything else, Your Honor.

19 **THE COURT:** All right. Well, I am going to
20 admit all three statements. And the reason for that,
21 or reasoning for that, is as follows. The first
22 statement, verbal statement, is given to Sergeant
23 Ewing following an advice of rights. And for what
24 that statement is worth, it is what it is. It refers
25 to two or three subjects that were under

1 consideration at the time, that being where the
2 defendant indicated that he had been at the location
3 of the Faraway Drive shooting but not on the date of
4 the crime, that there was no blood on his basketball
5 shirt, and that the shotgun shells were under the
6 couch.

7 And he later links that up to Sergeant McDaniels
8 when he says that the shotgun shells that were at the
9 house came from the trunk of a stolen car at the
10 Greystone Boulevard shooting. So there is a linkage
11 between not only the gun but the shotgun shells of
12 the two statements, the first statement and the
13 Sergeant McDaniels' statement when he confirms that
14 those are the same shotgun shells that were stolen
15 from the car that were used at the shooting at the
16 radio station on Greystone Boulevard.

17 The second statement, that being the written
18 statement that was given to Sergeant Ewing, I find
19 that the questioning of the defendant, the three
20 questions after the invocation -- and, I mean, there
21 is certainly evidence that there was an invocation of
22 his right to remain silent. There was a passage of a
23 period of time until the second statement was made.

24 And even though I may agree with Mr. Hisker's
25 position that the rights to remain silent; that is,

1 the Miranda warnings, may have been given after the
2 statement was presented to him, and that was the
3 written statement was presented to him, I think the
4 questions which are uncontradicted at this point that
5 he -- that those questions that we've already heard
6 several times: "When you were talking the first time
7 you mentioned you wanted to stop talking and have an
8 attorney. Is that correct?" "Yes." "Did you stop
9 Investigator Barnes at the Richland County Sheriff's
10 Office and request to speak with me after our first
11 conversation, and do you wish to now tell me what
12 took place"; I think that was a waiver of his right
13 to remain silent, and I think he has a right to do
14 that.

15 He has a right to initiate a conversation after
16 the invocation. His position that he was induced in
17 some manner to do that brings into question in my
18 mind the issue of credibility and whether or not
19 there was any inducement on behalf of law enforcement
20 to get him to change his mind and then enter into the
21 second statement.

22 There has been testimony from the law
23 enforcement that nobody did what he said they did.
24 It's sort of hard to prove a negative. But the
25 people who were there, both Barnes and Holdorf,

1 indicated said it was not them that went to the
2 defendant with Mr. Dukes' statement. And so all I
3 have to base that decision on is the defendant's
4 statement when I've got at least two officers saying
5 they didn't do it. And the fact that somebody could
6 have done it is not to me sufficient evidence to
7 exclude the second statement.

8 The third statement, being the second written
9 statement, was taken after a second set of Miranda
10 warnings. And that is clearly allowable. Even as to
11 the fact that it was a different crime, the United
12 States Supreme Court in Michigan v. Moseley and then
13 United States vs. Bogle both indicated that the
14 defendant can always initiate conversation -- not
15 initiate conversation -- but can be questioned
16 following a second advice of rights, Miranda
17 warnings, even if it's involving a different crime.

18 And the fact that the defendant after -- I mean,
19 even if I take what he says as correct and believe
20 that making the second statement was done -- even if
21 I did think that -- was done without proper warnings,
22 the fact that he admits to the gun and the shotgun
23 shells after a second set of Miranda warnings goes to
24 me to -- I mean, it seems to me that that confirms my
25 decision to allow the second -- I mean the first

1 written statement into evidence.

2 After being advised a second time of his right
3 to remain silent, he doesn't remain silent. He says
4 that the shotgun was used at Faraway Drive and that
5 the shells came from the trunk of the car that they
6 stole.

7 I mean, it seems to me that he doesn't say a
8 whole lot more in the first written statement. I
9 mean, he admits the crime in the second written
10 statement. I mean, you could almost throw the first
11 written statement out and go with the second
12 statement if that was a Constitutional problem. But
13 I don't see it as a Constitutional problem.

14 I have to rely on what I consider to be credible
15 evidence in the case. The fact that the defendant --
16 and I probably shouldn't even mention it -- but the
17 fact that the defendant is not naive about police
18 procedures, is not naive about consequences of
19 remaining silent or giving statements to the police,
20 I think weighs heavily somewhat, somewhat heavily, at
21 least significantly, in my decision that this is not
22 a man who is a babe in the woods when it comes to
23 dealing with the police.

24 Obviously he felt some either remorse or some
25 feeling that he might be given consideration for his

1 disclosing these matters with regard to his treatment
2 versus the co-defendant's treatment or co-defendants.
3 I don't know. It looks to me like there are three
4 defendants. I thought there were only two. But it
5 looks like that that may have been the motive for
6 doing what he did; and that, as I say, after
7 invocation the defendant can come back and say, I've
8 changed my mind; I want to tell all; I want to tell
9 it like it is.

10 So I find the statements are voluntary under
11 Miranda and that the defendant was fully advised of
12 his rights under Miranda v. Arizona and that he
13 waived those rights and entered into all three of
14 these statements. I find those facts by a
15 preponderance of the evidence. I, therefore, find
16 the statements are admissible in evidence.

17 Now, anything else of a pre-trial nature?

18 **MR. HYSKER:** Yes, sir, Judge. Just to clarify.
19 I understand your ruling, but I want to put on the
20 record that I know a lot of my argument was based on
21 the Miranda and invocation. But I want to make sure
22 that I have also -- I've also raised a voluntariness
23 issue, that there was questions about the period of
24 the detention, six hours.

25 **THE COURT:** I neglected to mention that. You

1 are quite correct. I just did a quick timeline. I
2 don't find that there's any evidence that the
3 defendant, A, requested water, food or a smoke break
4 or that he was uncomfortable about anything during --
5 there is just -- the record is void of any such
6 testimony.

7 I don't know exactly when the defendant was
8 brought into police headquarters. But I do find that
9 a period of six hours is not necessarily an excessive
10 amount of time to go through this procedure. We're
11 talking about three different statements. There is a
12 lag time.

13 Even the defendant admits there's no question at
14 least when he's taken to the D cell he's alone. I
15 assume he's alone, that there weren't other
16 defendants in there. So there is a gap of how much
17 time I don't know.

18 But with the first statement being taken at
19 roughly 12:41, that is the first advice of rights.
20 The gap between 12 and 3:00 is the gap of time after
21 he invoked and before he gave the first written
22 statement. And then there's some two to two-plus
23 hours before Investigator McDaniels comes and gets
24 the second written statement. So I don't find
25 that -- that's sort of like a normal workday. I

1 don't find that to be an excessive period of time.

2 And there is no evidence of coercion or hope of
3 reward or anything else that would convince me that
4 the statement was less than voluntary.

5 **MR. HISKER:** Judge, my remaining pre-trial
6 motions deal first of all, the third statement deals
7 with a separate incident. And I object to that being
8 admitted based on 404. And essentially there is no
9 reason to tell this jury that Mr. Middleton confessed
10 to a totally separate crime. It does not lead to
11 the -- it does not identify the perpetrator. It may
12 identify the weapon, but whether or not that's the
13 weapon is really not an issue. The State has already
14 got a SLED analysis that shows that it's consistent.
15 It is a shotgun --

16 **THE COURT:** Wait a minute. SLED analysis what?

17 **MR. HISKER:** There is -- well, maybe it's not a
18 SLED analysis. Maybe it's ballistics analysis that
19 it is consistent with the types of shells found.

20 **THE COURT:** What are they? 12-gauge?

21 **MR. HISKER:** 12-gauge shotgun shells. So it's
22 not a discernable type weapon. It's not a --

23 **THE COURT:** You're talking about 12-gauge at
24 Greystone and 12-gauge at Faraway?

25 **MR. HISKER:** Yes, sir.

1 **THE COURT:** I mean, there is evidence of a
2 12-gauge at both locations?

3 **MR. HISKER:** Yes, sir.

4 **THE COURT:** Okay.

5 **MR. HISKER:** But it's not the type of
6 discernable weapon that leaves a clear ballistics
7 link that can say that the shooter of one must be the
8 shooter of the other. The only link is that the
9 defendant confessed to both. And that to me just
10 tells the jury that -- all it does is give the jury
11 the information that he is on a crime spree. And
12 that's impermissible. It's just --

13 **THE COURT:** Well, what's the time between the
14 two crimes?

15 **MR. HISKER:** Approximately three weeks to a
16 month.

17 **MS. CAMPBELL:** July the 14th through August the
18 8th.

19 **THE COURT:** July 14th, August the 8th?

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** Any intervening crimes?

22 **MS. CAMPBELL:** I have to check the dates. Can I
23 check them?

24 **THE COURT:** I mean, when we talk about a spree,
25 we talk about some sort of a continuous pattern of

1 behavior.

2 MS. CAMPBELL: Yes, sir. And we would be
3 offering, in both cases the defendants are together
4 attempting to do an armed robbery. And Mr.
5 Middleton, which I think you've had an opportunity to
6 review his statement, in his first written statement
7 he basically minimizes his role in anything other
8 than to occasionally participating but minimizes his
9 role. Our position --

10 THE COURT: He didn't exactly minimize it. He
11 says he kicked the guy while he was down.

12 MS. CAMPBELL: He says the other guy shot him.
13 He says he did kick one guy while he was down but he
14 was trying to wake him up.

15 THE COURT: Is that not the victim? Is that not
16 the victim.

17 MS. CAMPBELL: The victim; yes, sir.

18 THE COURT: So he participated in --

19 MS. CAMPBELL: There was an intervening home
20 invasion in which I believe a shotgun was used that
21 happened on July the 27th.

22 THE COURT: These same people?

23 MS. CAMPBELL: Mr. Middleton confessed to that
24 one also. Your Honor, the purpose of us putting it
25 in would be as to intent. And we do think it is --

1 as you mentioned, the third statement or the second
2 written statement is extremely probative.

3 **THE COURT:** Of what? I mean, it ties the two
4 together only, as Mr. Hisker said, with a weapon.

5 **MS. CAMPBELL:** Yes, sir. But we would be
6 offering it under 404(b) as far as his intent as
7 well. He minimizes his role. He says he basically
8 blames Teran Scott for every horrible event that
9 occurs. And we would be offering it -- and I've got
10 Mr. Thompson here and he can testify as to both of
11 them, they were in there for the purpose of robbery.

12 **THE COURT:** Who is Mr. Thompson?

13 **MS. CAMPBELL:** He is the victim in the July 14th
14 one, the Greystone Boulevard one.

15 **THE COURT:** All right. Go ahead.

16 **MS. CAMPBELL:** And this defendant --

17 **THE COURT:** I mean, what -- other than to prove
18 that he's a robber --

19 **MS. CAMPBELL:** It goes to his intent, Your
20 Honor. He is not just along for the ride.

21 **THE COURT:** Doesn't he say in his first written
22 statement what his intent was, to rob the place?
23 That's his intent. He says that.

24 **MS. CAMPBELL:** But he minimizes his role as
25 being the shooter. In the July the 14th, he is the

1 one handling the shotgun. So it's not that he is
2 just along and Teran Scott brings out a shotgun and,
3 oh, bad things happen. Absence of mistake.
4 Identity, as well as intent, Your Honor.

5 **THE COURT:** I know what the four exceptions are.
6 I'm trying to find out why this is -- what the
7 July 14th event has to do with the August 8th stuff.
8 I mean, there has to be some logical relevance
9 between the two.

10 **MS. CAMPBELL:** The relevance is that --

11 **THE COURT:** I mean, they've got to be -- I think
12 he used the word inextricably intertwined. I mean,
13 there has got to be something linking the two other
14 than just the weapon.

15 **MS. CAMPBELL:** It's the defendant and the
16 weapons and what they are doing. They're out robbing
17 people with a shotgun in which they happened to over
18 and over shoot them.

19 **THE COURT:** Hmm?

20 **MS. CAMPBELL:** They shoot people. In this case
21 Middleton confesses that he is the one that's
22 actually handing the shotgun when it goes off and
23 shoots Christopher Thompson.

24 **THE COURT:** I didn't remember who the shooter
25 was in that case.

1 **MS. CAMPBELL:** It was Octavia Middleton.

2 **THE COURT:** Do you disagree with that, Mr. --
3 I'm just ...

4 **MR. HISKER:** Well, Judge, the State --

5 **THE COURT:** I think he said the gun went off,
6 didn't he?

7 **MS. CAMPBELL:** Yes, sir. While he had it. He
8 was getting out from underneath Teran Scott, I
9 believe is how --

10 **THE COURT:** Teran was sitting on it.

11 **MS. CAMPBELL:** Yes, sir.

12 **THE COURT:** Something like that.

13 **MR. HISKER:** With the intent to point it. I'll
14 concede that. He doesn't say --

15 **THE COURT:** Well, if he had it and it went off,
16 it's still -- if he had it and it went off, whether
17 he intended or did not intend --

18 **MR. HISKER:** I agree with Your Honor that the
19 entire first statement says all the State needs to
20 get, and there is nothing relevant after that in
21 point. Even if it is marginally relevant to
22 establish that this was the same gun or some intent
23 to rob, which is already clear from the first
24 statement, I'd ask Your Honor just to run it through
25 the 403 analysis which shows it's clearly not

1 probative enough to come in, based on the undue
2 prejudice that's going to result. All it does is
3 show that Mr. Middleton is a violent individual that
4 had multiple charges for the same type of thing.

5 **MS. CAMPBELL:** No, sir. It shows that Mr.
6 Middleton is the person that has the shotgun. He is
7 willing to use it. The same shotgun goes off while
8 in his hands, not while he's blaming Teran Scott for
9 doing the shooting. I don't see how we could get
10 into the fact -- and the statements, as you pointed
11 out in that last statement, in the last written
12 statement, where he talks about the shotgun shells as
13 well as he talks about, is this the same rifle that
14 you used on August the 8th. He admits that that's
15 the rifle.

16 **THE COURT:** Shotgun.

17 **MS. CAMPBELL:** I'm sorry?

18 **THE COURT:** Is there evidence that it's the same
19 shotgun?

20 **MS. CAMPBELL:** There were no shell casings
21 recovered from the --

22 **THE COURT:** Well, I mean, the second written
23 statement says they threw the gun in the woods.
24 Didn't it?

25 **MS. CAMPBELL:** The police recover the gun, Your

1 Honor.

2 *THE COURT:* Oh.

3 *MS. CAMPBELL:* I've got the gun.

4 *THE COURT:* Well, it always helps when I know
5 the facts.

6 *MS. CAMPBELL:* I'm sorry.

7 *THE COURT:* So we have the gun. All right.

8 *MS. CAMPBELL:* We have Christopher Thompson
9 during an attempted robbery --

10 *THE COURT:* And it's a Remington or something.
11 Middleton says it's a Remington. We got a Remington
12 which they have now. Is that right?

13 *MS. CAMPBELL:* I beg the Court's indulgence.

14 *MR. HISKER:* It's actually a Maverick.

15 *MS. CAMPBELL:* It's a Maverick model 88
16 pump-action shotgun, 12-gauge.

17 *THE COURT:* A Maverick? Middleton said the
18 other gun was a 12-gauge Remington.

19 *MS. CAMPBELL:* He says it's the same gun. And
20 we can --

21 *THE COURT:* Where does he say it's the same gun?

22 *MS. CAMPBELL:* In McDaniels' statement, Your
23 Honor. Beg the Court's indulgence. "It is the
24 shotgun that was used in the shooting on Greystone
25 Boulevard" --

1 **THE COURT:** Okay. I remember that.

2 **MS. CAMPBELL:** And then they go on to say, "Are
3 the shells that were in your house the same shells
4 that came out of the trunk?" "It was a 12-gauge. I
5 think it was a Remington."

6 The shotgun, Your Honor, was actually taken from
7 a car break-in that was done prior to both incidents.

8 **THE COURT:** Yes. I understand that.

9 **MS. CAMPBELL:** Okay.

10 **THE COURT:** He says it.

11 **MR. HISKER:** Judge, my position is, the State's
12 argument that, you know, Mr. Middleton minimizes his
13 role, that doesn't hold water. Because the State is
14 going to argue the hand of one is the hand of all,
15 and it really doesn't matter who the shooter is
16 anyway.

17 **MS. CAMPBELL:** If you'll concede that point, I
18 don't have any further argument.

19 **MR. HISKER:** Well, if the State will not make
20 that argument, then --

21 **MS. CAMPBELL:** If he'll stipulate that he is
22 guilty under the hand of one is the hand of all, we
23 don't think we need this.

24 **MR. HISKER:** I don't think I can stipulate to
25 that. I think --

1 **THE COURT:** I'm not going to rule on that.

2 **MS. CAMPBELL:** Okay.

3 **THE COURT:** But other than the -- all right.

4 Let me just be clear, Ms. Campbell. I think under --
5 let me back up or approach it from the inverse
6 position. If I do a 404(3) analysis, it is clearly
7 prejudicial. I don't know that it's more probative
8 than it is prejudicial. In other words, --

9 **MS. CAMPBELL:** And I guess, Your Honor, I'm just
10 somewhat confused because I don't know -- I mean, he
11 makes admissions specific to this murder case.

12 **THE COURT:** Right.

13 **MS. CAMPBELL:** If you're going to limit me to
14 just using that question and answer portion when it
15 talks about the gun and the shots. Could I proffer
16 Mr. Thompson just so we'd have a full factual basis?

17 **THE COURT:** If you need to.

18 **MS. CAMPBELL:** I mean, that's extremely
19 probative, as far as that much of the statement --

20 **THE COURT:** Well, but we're not trying him for
21 that. We're trying him for Faraway Drive.

22 **MS. CAMPBELL:** Yes, sir. And we think it comes
23 in under 404(b), that it's more probative than
24 prejudicial.

25 **THE COURT:** Well, the rule is, evidence may be

Travis Holdorf - Redirect by Ms. Campbell (In Camera)

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1 excluded if its probative value is substantially
2 outweighed by the danger of unfair prejudice.

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: Substantially outweighed by the
5 danger of unfair prejudice. I mean, it just goes
6 without saying it's full of unfair prejudice. Now,
7 whether that outweighs the probative value of it is
8 ultimately the question.

9 MS. CAMPBELL: Yes, sir.

10 THE COURT: If you wish to call somebody, call
11 him.

12 MS. CAMPBELL: The State would call Christopher
13 Thompson.

14 CHRISTOPHER THOMPSON, after being duly sworn,
15 testifies as follows:

16 THE CLERK: Thank you. Please have a seat in
17 the witness stand and state your full name for the
18 record.

19 WITNESS: Christopher Thompson.

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL

22 Q Mr. Thompson, where are you employed?

23 A Clear Channel Communications.

24 Q And what do you do there, sir?

25 A I'm the sports director for WVOC and for Sports Radio

1 1400.

2 Q What are your usual hours of operation when you go to
3 work?

4 A I usually arrive between 5:30 and 5:40 in the morning
5 and usually work around until 2 or 3:00 in the
6 afternoon.

7 Q I want to turn your attention back to July the 14th,
8 I believe it was, of 2005. Were you going to work
9 that morning?

10 A I was.

11 Q And tell the judge just briefly what you did prior to
12 getting to work, your usual routine?

13 A My usual routine is I go to the S-Mart across the
14 street on Greystone, at the corner of Greystone and
15 Stoneridge. I pick up a USA Today newspaper. I'm
16 usually there between 5:20 and 5:25. As soon as I'm
17 done there, I come back across Greystone, take an
18 immediate right into our building which is [REDACTED]

19 [REDACTED]. I go to the back of the
20 building which is where the employees park. I park.
21 I get some personal items out of the front seat and
22 then I get my work products out of the back seat and
23 close my doors and head into the back door at work.

24 Q And is that what you were doing that morning on July
25 the 14th?

Christopher Thompson - Direct by Ms. Campbell (In Camera)

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1 A It was.

2 Q And you mentioned that you parked in the back of the
3 building. Is that more secluded than the front?

4 A It is.

5 Q And when you got back there, when you originally got
6 back there, did you see anyone?

7 A I did not. No.

8 Q And what first caught your attention that morning as
9 you were getting stuff out of your car?

10 A Well, there are usually people arriving around that
11 time of the morning. We have several morning shows
12 within the building. So as I was getting things out
13 of my back seat, my work products, I did notice a car
14 making its way into the parking lot in the back area.
15 I saw the headlights but it didn't alarm me because
16 there are people arriving around that time of the
17 morning.

18 When I closed the door, when I had everything in
19 my arms, that's when I took a second look back
20 because I noticed the car was hovering. It was not
21 parking. It was just hovering behind mine.

22 Q So when you say hovering, does it mean it was just
23 slightly behind your car?

24 A Right. It had pulled up by then and it had come to a
25 stop.

1 Q And approximately how far from your car was that car?
2 Do you know?
3 A Maybe three feet.
4 Q So closer than you and I are?
5 A About where you and I are now.
6 Q And could you tell how many people were in the car?
7 A Two.
8 Q And where were they sitting?
9 A In the front seat, driver's seat and the front
10 passenger's seat.
11 Q Could you tell if they were male or female?
12 A They were male.
13 Q Could you tell if they were black or white?
14 A They were black.
15 Q Could you tell anything else about them?
16 A I could not.
17 Q And as you noticed that it was right behind this car
18 this far from you, what's the next thing you noticed?
19 A Right behind me and lower because they were sitting
20 in the car. So they would have been lower than you.
21 At that --
22 Q What do you see next?
23 A At that point I saw a gun pointed at me, a long --
24 Q Where did the gun come from?
25 A It came from the passenger's side which was the

Christopher Thompson - Direct by Ms. Campbell (In Camera)

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1 closest side to me.

2 Q And the passenger's side that it came out of, was the
3 window rolled up or down, or how did it come out?

4 A It was rolled down.

5 Q And where was the gun pointed?

6 A At me.

7 Q Could you hear them say anything at that point?

8 A Five words: "Get down on the ground."

9 Q And were you able to comply with what they requested?

10 A No. As soon as I heard those words, the gun went
11 off.

12 Q When the gun went off, what happened to you?

13 A Well, I was stunned for a period of time. When I
14 came -- when I realized what had happened, I was on
15 the ground. Where I had been at the rear of my car,
16 I was now at the front of my car on the ground.

17 Q So it had pushed you backwards?

18 A It blew me backwards and toward the front of my car,
19 whereas I had been at the back of my car. As I got
20 into a sitting position, I looked down at my arm and
21 it was completely shredded. There was blood. There
22 was bone. There was -- it was a mess. And then I
23 realized that I had intense pain in my side, in my
24 right side.

25 As I got to a sitting position I leaned back

1 against the car that was parked next to me. And at
2 that point I realized that the car that the gun had
3 been pointed out of had circled the parking lot and
4 that it was now going back around. I mean, I'm on
5 the ground. So I could see the lights and I could
6 hear the engine. And it's now moving toward the
7 entrance of the parking lot to leave, but then it
8 stops as it pulled past my position.

9 Q And at that point what's going through your mind?

10 A At that point going through my mind is I'm thinking
11 whoever shot me saw that I had reached a sitting
12 position and decided they were going to come back and
13 finish me off.

14 Q Did the car in fact turn back around?

15 A No. It stayed there for about 25 to 30 seconds, and
16 probably the most tense moments of my life, and then
17 it eventually did slowly move out of the parking lot.

18 Q At that point where you able to call for help?

19 A I did. Assoon as I saw the lights leave and I heard
20 the engine go away, I immediately called inside the
21 building and told my supervisor to call 911, that I
22 had been shot.

23 Q Did you later get taken to the hospital by ambulance?

24 A I did.

25 Q And how long were you in the hospital for your

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1 injuries?

2 A Three weeks.

3 Q And what injuries did you sustain from the shotgun
4 blast?

5 A Well, starting with my chest, I took a lot of the
6 explosion to my right side. So I have a huge
7 mid-line incision. They removed my gallbladder. My
8 liver was, as they put it, chewed up. But it was
9 able to heal. I had two stints put into my bile duct
10 where there was a leak there.

11 I ended up having four surgeries on my body and
12 then another four on my arm. I suffered extensive
13 nerve damage to my arm. I only have limited motor
14 skills with my right wrist. There is obviously
15 scarring. I lost a lot of tissue and a lot of the
16 meat in the arm right here on my right forearm.

17 I also have other scars. I had a skin graft
18 taken from my right leg. I had a tendon taken from
19 my right ankle to put into my right arm to try and
20 help the wrist motion.

21 Q And were you and the doctors able to determine what
22 kind of ammunition was used to shoot you?

23 A They showed me -- as soon as I got to the hospital
24 they showed me the x-rays just before they took me
25 into surgery. And my x-rays, I mean, you can see

1 just hundreds of metal dots where there are shotgun
2 pellets. And, I mean, I have one right here that's
3 visible. They pop up out of my skin every now and
4 then.

5 Q Did you ever get a good look at the face of the
6 people that did this to you?

7 A I did not.

8 Q The shotgun, just for the record, sir, when it was
9 pointed out the window, was it pointed up in the air?
10 How was it pointed?

11 A It was pointed directly at me.

12 Q And you took the shot full bore from about three feet
13 away?

14 A I did. I was standing to the side because I was
15 still pointed toward my car. I had turned my head
16 but I was still pointed to my car where I had just
17 closed the door. And I had my books under my arm.
18 So I took half the blast on the top of my arm and the
19 other half directly into this portion of my side. So
20 I took it full onto my side.

21 Q And how long were you in intensive care?

22 A In intensive care, I'll have to think about that. I
23 was under a lot of medication for a while. I was in
24 the ICU for I think four days before they moved me
25 upstairs to intensive care where I spent another two

Christopher Thompson - Direct by Ms. Campbell (In Camera)

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1 weeks and four days I think.

2 MS. CAMPBELL: Okay. That's all I have, Your
3 Honor.

4 MR. HISKER: May it please the Court?

5 CROSS EXAMINATION

6 BY MR. HISKER

7 Q Good afternoon, Mr. Thompson.

8 A Good afternoon.

9 Q Now, you gave a statement, correct?

10 A I did.

11 Q I believe? And you told the police that you didn't
12 really have any time to react. Is that correct?

13 A That's correct. I heard the words, "Get down on the
14 ground."

15 Q And then you immediately heard a shot?

16 A Yes.

17 Q Did not even have a chance to comply?

18 A Correct.

19 Q Now, how long did you get a chance to see the rifle
20 before you heard the words?

21 A Maybe a second.

22 Q So you can't -- and it was dark at that time, too.
23 Correct?

24 A It was dark. We have some street lights, I mean, the
25 regular overhead parking lights in the back.

1 Q So it would be difficult for you to say exactly what
2 angle that gun would have been pointed?
3 A No. I saw the barrel pointed right at me.
4 Q You were pretty close to it though, correct?
5 A Closer than you and I.
6 Q Right. So that gun could have been pointed still at
7 an upward angle and hit you in the arm even that
8 close?
9 A How much of an upward angle?
10 Q Well, if you're in a car.
11 A Yes.
12 Q If someone is in a car, --
13 A Right.
14 Q -- I mean, it would have had to have been at an
15 upward angle to hit you standing?
16 A Yeah, it was. Yeah. It --
17 Q Because you were that close?
18 A Right.
19 Q It wasn't level. It wasn't straight out?
20 A No. It was pointed upward at me.
21 Q Because it's coming from a lower car?
22 A Correct.
23 Q And you're standing?
24 A Correct.
25 Q How much of the barrel would you say was sticking out

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1 of the car? Would you say that ...

2 A I'm not sure.

3 Q Nobody ever got out of the car?

4 A No.

5 Q And you had absolutely no time to comply at all? You
6 heard the words and then the shot?

7 A That's correct..

8 Q That's all I have. Thank you.

9 THE COURT: Anything further?

10 MS. CAMPBELL: Nothing from this witness, Your
11 Honor.

12 THE COURT: All right. You may come down, sir.
13 Thank you very much, sir.

14 MS. CAMPBELL: Your Honor, for the record, just
15 to expedite things, I would hand up copies of two
16 reports and make them Court's Exhibits.

17 (WHEREUPON, Court's Exhibit No. 1 is marked for
18 identification.)

19 (WHEREUPON, Court's Exhibit No. 2 is marked for
20 identification.)

21 MS. CAMPBELL: I would note, Your Honor, that in
22 both cases the ballistics reports show that it was
23 No. 8 lead birdshot that's consistent. I will just
24 hand that up for the Court.

25 (Document handed to the Court)

1 **THE COURT:** You've seen them? You've seen them?

2 **MR. HISKER:** Yes, sir.

3 **MS. CAMPBELL:** Without publishing the statement,
4 I think you've had an opportunity to review it, the
5 second written statement. We would incorporate that
6 for purposes of this motion.

7 **THE COURT:** Oh. Certainly. I've read it.

8 **MS. CAMPBELL:** Okay.

9 **THE COURT:** All right. Anything further from
10 the State?

11 **MS. CAMPBELL:** No, sir.

12 **MR. HISKER:** Judge.

13 **THE COURT:** Either on 404(b) or 403?

14 **MS. CAMPBELL:** No, sir, Your Honor. It's just,
15 our position I think is clear.

16 **THE COURT:** All right. I think your position is
17 clear.

18 **MR. HISKER:** Would you like to hear from me?
19 Judge, I'd also like to mention that the Thompson
20 shooting was a highly publicized event. I have
21 searched the local media and found no less than ten
22 articles about this incident. There are blogs
23 attached to some of these newspaper articles where
24 people have written in about the state of crime in
25 Columbia.

1 And I think to interject this very high-profile
2 crime into a crime that many people probably do not
3 know of just adds to that prejudice. There is not
4 a -- there is a very minimal relevance at all if it's
5 only to the shotgun. I submit that that's not enough
6 to get past a 403 analysis. When you add the
7 pre-trial publicity involved in the Thompson
8 shooting, not only --

9 **THE COURT:** You think that makes it
10 substantially outweighed?

11 **MR. HISKE:** Absolutely. Absolutely. But I'd
12 also ask Your Honor to consider the testimony of Mr.
13 Thompson. Mr. Thompson's testimony may support even
14 Mr. Middleton's statement that it was an accident.
15 And I don't mean in terms of legal accident, but at
16 least a demand was made, a shot was fired
17 immediately. He did not even have the attempt to
18 comply. If they were going to commit a robbery, at
19 that point they would have got out of the car and
20 robbed him. Something tells me that that was an
21 accident, that that was, the gun went off, they
22 didn't even get a chance to do what they were going
23 to do because the gun went off.

24 **THE COURT:** Well, they may have done what they
25 wanted to do. How do you know -- they may have just

1 wanted to shoot somebody.

2 **MR. HISKER:** Well, Judge, if that were the case,
3 it's even far more prejudicial. Now you have a drive
4 by shooting with no motive at all other than the
5 intent to kill somebody.

6 **THE COURT:** Isn't that what you've got?

7 **MR. HISKER:** Well, if the jury believes that --

8 **THE COURT:** Isn't that what you've got? You've
9 got a car crime. You've got a shotgun coming out of
10 a car and somebody getting shot. That's all I've
11 heard.

12 **MR. HISKER:** Well, absolutely, Judge. It's
13 either one of two things. It's either an attempted
14 killing, a drive by shooting with not even a
15 financial motive, just a motive to kill somebody for
16 the sake of killing them.

17 **THE COURT:** That's the only thing that's in the
18 record.

19 **MR. HISKER:** Or it's an accident.

20 **THE COURT:** That's the only thing that's in the
21 record.

22 **MR. HISKER:** Well, no. Mr. Middleton's
23 statement --

24 **THE COURT:** Other than him.

25 **MR. HISKER:** Absolutely. But Mr. Middleton's

1 statement is that the gun just went off. They were
2 attempting to rob him and the gun went off. But I
3 think the worst danger in this case is the jury is
4 going to think these guys are just driving around
5 looking for somebody to shoot.

6 *THE COURT:* Okay. Anything further?

7 *MR. HISKER:* No, Your Honor.

8 *THE COURT:* Anything further of a pre-trial
9 nature before we draw this jury?

10 *MS. CAMPBELL:* Oh. I haven't looked at Voir
11 Dire, but I'm sure --

12 *THE COURT:* Yeah. Let me look at it.

13 *MR. HISKER:* Judge, I'd also like to pass up the
14 pre-trial publicity, if I could mark that.

15 *THE COURT:* Sure.

16 (WHEREUPON, Court's Exhibit No. 3 is marked for
17 identification.)

18 *MR. HISKER:* Judge, some of this Voir Dire is
19 going to depend on your ruling on the Thompson
20 shooting.

21 *THE COURT:* All right. I'll take a look at it.
22 I'll let you know at 9:30. We'll reconvene at 9:30.
23 The jury will be here at 9:30, thereabouts. And
24 depending on the -- well, we'll draw the jury then.

25 *MR. HISKER:* Judge, the only other thing that I

1 didn't mention before were photographs. I think Ms.
2 Campbell and I may want to look at the photographs
3 that she intends to introduce.

4 **MS. CAMPBELL:** We can do that.

5 **MR. HISKER:** And, you know, I'd also like to
6 prohibit some of the references to the victim's --
7 some of the victim impact evidence, that was a former
8 police officer and that he has prosthetic legs. I
9 just think that's --

10 **THE COURT:** Are you making a motion? Is this an
11 in limine motion?

12 **MR. HISKER:** Yes, sir.

13 **THE COURT:** Well, tell me about it.

14 **MR. HISKER:** Well, I think we need to -- I guess
15 it would depend on which pictures Ms. Campbell
16 intends to use and what information she intends to
17 get into.

18 **THE COURT:** Well, she knows the rules on
19 pictures. She'll only try to introduce three or four
20 extra ones. You think you can work that out?

21 **MR. HISKER:** I guess we'll cross that bridge
22 when we get to it, Judge.

23 **MS. CAMPBELL:** We should at least be able to
24 limit the scope if they have objections. Thank you,
25 Your Honor.

1 **MR. HISKER:** Thank you, Judge.
2 (Whereupon, the proceedings are concluded for
3 the day, to be reconvened tomorrow morning)
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Tuesday, August 28, 2007

(Note - State's Exhibit No. 6, a photograph, is marked erroneously by the Solicitor's Office prior to commencement of the trial. Therefore, the previously marked State's Exhibit No. 6, a statement, is later re-marked as 6-A)

(WHEREUPON, State's Exhibit No. 6 is marked for identification.)

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18 identification.)
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20 identification.)
21 (WHEREUPON, State's Exhibit No. 97 is marked for
22 identification.)
23 **THE COURT:** Approach the bench, counsel.
24 (Whereupon, a bench conference is had)
25 **THE COURT:** All right, counsel. You ready to

1 proceed?

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Defense ready to proceed?

4 MR. HISKER: The defense is ready.

5 THE COURT: All right. To wind up our
6 discussion of yesterday, the defense made a motion to
7 exclude the August the 11th statement given to
8 Investigator McDaniels based on 404(b) and 403
9 analysis. As to that issue, as to the 404(b), I'm
10 going to grant the defense motion to exclude that
11 portion of the August 11th statement that relates to
12 the shooting at Greystone Boulevard.

13 I find no logical relevance between that
14 shooting and the alleged crime. I find they're not
15 inexorably intertwined; that is, the shooting at
16 Greystone Boulevard and robbery and subsequent
17 shooting at Faraway Drive. I find no substantial
18 relationship to any of the exceptions of 404(b), that
19 being motive, common scheme or plan, intentional
20 absence of mistake or accident, identity or res
21 jecti.

22 Although some argument could be made as perhaps
23 to one or more of those exceptions, I find they are
24 not a substantial relationship to any of those three
25 exceptions.

1 In addition, if I do a 403 analysis on this
2 issue, I would have to find that the Christopher
3 Thompson shooting was widely publicized. I feel that
4 that shooting would inevitably prejudice the jury in
5 this case and that the probative value of that
6 shooting at Greystone Boulevard is minimal when it
7 comes to proving the elements of these indictments.
8 So I think both on 404(b) analysis and a 403
9 analysis, I would have to exclude the portion of the
10 statement that relates to the shooting of Christopher
11 Thompson.

12 However, in addition to the shooting of
13 Christopher Thompson, the defendant admits to another
14 prior bad act, and that is the breaking into an
15 automobile and stealing a shotgun which was used, as
16 indicated yesterday, in this case.

17 So I do find that that portion of the statement
18 given to Officer McDaniels which is found on page 2,
19 that being: "Where did you get the shotgun from?"

20 "A hotel on Forest Drive or Two Notch Road. I
21 can't remember. It had a bunch of shotgun shells in
22 the truck. I broke the small back window by the
23 driver's side, hit the trunk button by the driver
24 door. The shotgun was in the trunk, a bunch of boxes
25 with the shells. It was a 12-gauge. I think it was

1 a Remington because those are the only type of
2 bullets that he had for them. It was nice, black and
3 real long. It had three shots. It held three shots.
4 You had to press a button on the back before you
5 cocked it."

6 "Are the shells that were in your house the same
7 shells that came out of the trunk?"

8 "All of the shells came out of the trunk. I
9 never bought any for it."

10 So that portion of that statement I think is
11 admissible and does not -- I mean, it does meet at
12 least two of the exceptions to 404(b), that being the
13 common scheme or plan. When the shotgun is stolen
14 and used in the crime alleged, that's a logically
15 relevant connection between those two crimes. It's
16 the same gun. It's, in the language of the courts,
17 inexorably intertwined with the alleged crime.

18 And I find that those exceptions, both the
19 common scheme and plan or intent may probably apply.
20 And besides that, a 403 analysis does not I think
21 exclude that portion because the probative value is
22 substantial and it's not greatly outweighed by the
23 prejudicial effect.

24 So that's my ruling as to the August 11th
25 statement given to Officer McDaniels. Ms. Campbell,

1 how you proceed to offer that evidence is up to you.
2 But it seems to me that you could do it just with
3 Officer McDaniels' statement.

4 **MS. CAMPBELL:** Yes, sir. The only other thing I
5 would -- and, Your Honor, the question and answer
6 before that you referenced, if we could redact that
7 and say: "Is the shotgun the same shotgun that was
8 used on 8-8-05?" Because that references directly
9 to --

10 **THE COURT:** Well, that's true. Redact.

11 **MS. CAMPBELL:** And just redact out the part
12 about using it in the shooting.

13 **THE COURT:** I agree.

14 **MS. CAMPBELL:** Thank you.

15 **THE COURT:** I agree. But if you're going to do
16 it with Officer McDaniels, just make sure he
17 understands that that admission was given. I'm not
18 suggesting you offer the entire redacted statement.
19 All right. You do it any way you want to.

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** Are you ready for the jury?

22 **MR. HISKE:** Your Honor.

23 **MS. CAMPBELL:** Yes, Your Honor.

24 **THE COURT:** Anything else?

25 **MS. CAMPBELL:** Your Honor, can we just have ten

1 minutes? We just were handed the jury list. And I
2 made that request earlier. If I could just look it
3 for ten minutes.

4 **THE COURT:** Sure. Let me see what Mr. Hisker
5 has in the way of housekeeping.

6 **MR. HISKER:** I've been through some of these
7 photographs. I don't know if the State plans on
8 using these. Do you plan on using these in opening?

9 **MS. CAMPBELL:** No. Not opening.

10 **MR. HISKER:** I'd ask, Your Honor, I'm moving in
11 limine to prohibit them from mentioning this victim's
12 handicap and the fact that he is a retired law
13 enforcement officer. There's no evidence that he was
14 targeted because of his handicap. The pictures show
15 him wearing long pants. There's no evidence that
16 anybody even knew he had this handicap. And I
17 believe the only reason to get this in is just to
18 further inflame this jury. It has nothing to do with
19 the case.

20 **THE COURT:** Well, it's a fact, isn't it?

21 **MS. CAMPBELL:** Yes, sir. It's like saying he's
22 not, you know, a black male that's 73 years old.

23 **MR. HISKER:** Those aren't prejudicial. Those
24 aren't prejudicial facts. Put the fact that he is a
25 handicapped individual --

1 **THE COURT:** All right. Let's do this. I'll
2 consider it and I'll prevent the State from
3 mentioning it in opening.

4 **MS. CAMPBELL:** That's fine.

5 **THE COURT:** And we'll take it up as it comes up.

6 **MR. HISKER:** And the retired law enforcement
7 also?

8 **THE COURT:** I don't know. What is it? I mean,
9 is he a retired law enforcement officer?

10 **MR. HISKER:** He is, from New York, New York
11 state.

12 **THE COURT:** Well, handicap is probably more
13 relevant than a retired law enforcement officer. I
14 mean, it's more factually significant.

15 **MR. HISKER:** Correct.

16 **THE COURT:** In other words, you don't have a
17 picture of him with his old uniform on or something
18 like that, do you?

19 **MS. CAMPBELL:** But, Judge, that's like
20 prohibiting us from saying it's a child that was
21 killed.

22 **THE COURT:** I'm not granting his motion at this
23 time.

24 **MS. CAMPBELL:** I'll shut up.

25 **THE COURT:** I'm just trying to understand what

1 his feelings of prejudice are. Do we need to go
2 through the pictures?

3 *MR. HISKER:* Well, if they're not going to use
4 them in opening, Your Honor, not yet. Unless you
5 want to take that up now.

6 *THE COURT:* I want to get this jury drawn.
7 That's what I want to do.

8 *MS. CAMPBELL:* Can we get Voir Dire, too?

9 *THE COURT:* Ma'am?

10 *MS. CAMPBELL:* Voir Dire?

11 *THE COURT:* What about it?

12 *MS. CAMPBELL:* I would ask that, you know, when
13 he talks about, you know, are we represented by law
14 enforcement and all that, make all those reciprocal.

15 *THE COURT:* I'll do that. And I've already
16 stricken all the references to WVOC.

17 *MS. CAMPBELL:* What is: "Have you anticipated
18 in any on-line blogs, chats or discussions concerning
19 the facts and circumstances of this case?"

20 *THE COURT:* Let me do this. Let me give my
21 standard --

22 *MS. CAMPBELL:* Standard.

23 *THE COURT:* -- voir Dire. And if Mr. Hisker
24 wishes more, I'll -- but I think all of that relates
25 to the WVOC matter.

1 **MS. CAMPBELL:** Yes, sir.

2 **THE COURT:** Because if nobody knows anything
3 about this crime, it's not likely that they
4 participated in any blogs.

5 **MS. CAMPBELL:** True.

6 **THE COURT:** Whatever a blog is. I don't even
7 know what a blog is.

8 **MS. CAMPBELL:** I don't either.

9 **THE COURT:** I'm sure Smith can enlighten us.
10 All right.

11 **MR. HISKER:** Judge, I want to refer -- do you
12 want to take up some photographs?

13 **THE COURT:** Why don't you hand them up. If you
14 object to them, let me see them. In the meantime,
15 why don't you look at the jury list.

16 (Document handed to the Court).

17 **THE COURT:** We'll take these up at a break.

18 **MR. HISKER:** These are photographs of the
19 tattoos of the defendant. There's no evidence that
20 those identify him in any way. I just think they
21 signify gang or the State is going to try to show
22 that this shows gang activity. We have no evidence
23 of gang activity.

24 **MS. CAMPBELL:** No, sir. We are not trying to
25 use it for that purpose. He has scratches on his

1 arms which are consistent with the level of violence.
2 He was literally taking chairs and beating these
3 victims.

4 **THE COURT:** Let's take this up at a break.

5 **MS. CAMPBELL:** Okay.

6 **THE COURT:** Nobody is going to use them in
7 opening argument. We will take a break. It's about
8 11:00 (sic). Let's get the jury pulled.

9 **MR. HISKER:** Okay.

10 **THE COURT:** There are two civil juries waiting
11 on this jury to be pulled first. So that's what
12 we're going to do now. We'll stand at ease for just
13 a minute.

14 (Whereupon, a break is taken)

15 **THE COURT:** Let me know when you're ready to
16 proceed, counsel.

17 **MS. CAMPBELL:** We're ready, Your Honor.

18 **MR. HISKER:** I could use another minute.

19 (Pause)

20 **MR. HISKER:** The defense is ready, Judge.

21 **THE COURT:** You've asked, Mr. Hisker, with your
22 Voir Dire to examine potential jurors out of the
23 presence of the rest of the jury panel if they have
24 been involved in or witness to or family been
25 involved in crimes of violence. I normally don't do

1 that but I will allow you to request that after we
2 see what they say. I mean, they'll identify that
3 they either have or have not. And those who wish to
4 be examined separately, I'll be glad to do that.

5 **MR. HISKER:** Judge, I just ask that they stand
6 and at that time we can ask them to come up.

7 **THE COURT:** We'll do that. And as I say, if you
8 have any further requests after I do Voir Dire, then
9 just let me know. Ready for the jury?

10 **MR. HISKER:** Do you want to take up any strikes
11 for cause now?

12 **THE COURT:** Sir?

13 **MR. HISKER:** Do you want to take up any strikes
14 for cause?

15 **THE COURT:** If you know them.

16 **MS. CAMPBELL:** You have strikes for cause?

17 **THE COURT:** If you know who they are. I mean,
18 you don't even know who is coming.

19 **MR. HISKER:** Well, I know the order that they're
20 going to be called based on the sheet.

21 **THE COURT:** You do?

22 **MR. HISKER:** Sir?

23 **THE COURT:** They're going to be called in the
24 order in which they're laid out. Do you have strikes
25 for cause?

1 **MR. HISKER:** Well, number 25 on this list, it
2 appears that she works at the State House. I'd ask
3 you to strike her for cause because she works for the
4 state.

5 **THE COURT:** Well, does she work for the
6 Department of Public Service?

7 **MR. HISKER:** Apparently is in the Senate or
8 something doing with Senators.

9 **THE COURT:** Well, if she is a clerical type
10 worker in the state Senate, I don't think that's
11 grounds for striking her.

12 **MR. HISKER:** Then there are several individuals
13 whose spouses are in law enforcement.

14 **THE COURT:** Well, then they need to identify
15 that.

16 **MS. CAMPBELL:** And it is identified, Your Honor.
17 And he has strikes for that purpose. Those aren't
18 strikes for cause.

19 **THE COURT:** Just remember jurors have the right
20 to serve. That's always my paramount --

21 **MS. CAMPBELL:** And Ms. Briggs is a clerk in the
22 South Carolina Senate.

23 **THE COURT:** He's got a right to put it on the
24 record. All right. Bring the jury, please.

25 **THE CLERK:** Yes, sir.

1 (Pause)

2 **THE COURT:** If it's the Richland County
3 Sheriff's Office, that's one thing. But the -- well,
4 we'll see.

5 (Pause)

6 **THE BAILIFF:** The jury is all present, Your
7 Honor.

8 **THE COURT:** All right. Good morning, ladies and
9 gentlemen. Welcome to the Court of General Sessions
10 for the Fifth Judicial Circuit. This is the criminal
11 division of our court system. We call it the Court
12 of General Sessions. The civil division is called
13 the Court of Common Pleas. These are names that have
14 been with us since Colonial times. We have just
15 elected to keep those names. And so that those of
16 you who are selected on this jury this morning will
17 be sitting on a criminal case.

18 I'm going to tell you a little bit about it in
19 just a minute, and I'm going to introduce the people
20 involved. I need to know -- I'm going to ask you a
21 series of questions very much like you went through
22 yesterday at jury qualification, but those were just
23 general questions for qualification yesterday. These
24 will be more specific. In other words, they will be
25 directly associated with the case that you're about

1 to try or that we are about to try and those of you
2 who are selected on the jury will be trying.

3 But before I do -- and the reason for doing that
4 obviously is so that we'll know a little bit about
5 you and we'll know a little bit about whether you
6 know anything about this case. It's important that
7 we have a jury that is fair and unbiased and
8 impartial. And if you were to have some connection
9 with the case, of course we'd have to ask you about
10 that, and perhaps we would not call you on this case.
11 But I'll ask you a series of questions about those
12 type of things in just a minute.

13 But as you I'm certain are aware, any case
14 that's brought before the criminal courts is
15 prosecuted by what's known in South Carolina as the
16 Solicitor's Office. And the Solicitor's Office is
17 the prosecuting entity. Some places, they call it
18 the District Attorney's Office or the State's
19 Attorney's Office, but here in South Carolina we call
20 it the Solicitor's Office. And all cases are begun
21 with what's known as an indictment.

22 Now, there are several indictments in this case,
23 and I'm going to read them to you so you'll
24 understand a little bit about what's going on in the
25 case before we actually do the jury selection. But

1 let me say to begin with that these indictments are
2 merely the pieces of paper. That's all they are at
3 this point. They are accusations. Anybody that's
4 brought before a criminal court in the state of South
5 Carolina, in Richland County, in this United States,
6 is presumed innocent of the charges that are alleged
7 in these indictments until they are proven to you or
8 to a jury by proof convincing you of its truth beyond
9 a reasonable doubt.

10 In other words, these are just the formal legal
11 documents by which a case is started. They're not
12 evidence of anything. The defendant in this case,
13 and I'll introduce him to you in just a minute, is
14 presumed innocent of all the charges in these various
15 indictments, and that I'm going to read to you. And
16 that's a very important point of our law, that as I
17 say, everybody, every individual charged with a crime
18 is always presumed innocent until proven guilty by
19 the state.

20 Now, as I said, the prosecuting entity in this
21 case is the Fifth Judicial Circuit Solicitor's
22 Office, and the assistant solicitors who will be
23 prosecuting this case today are Ms. Kathryn Luck
24 Campbell and Mr. Dan Goldberg. I'll ask these
25 counsel to stand, please. I need to know if any

1 member of the jury panel is related by blood,
2 connected by marriage or employment, or a close
3 personal acquaintance of either Ms. Kathryn Luck
4 Campbell or Mr. Dan Goldberg? If so, please stand.
5 All right. Thank you, counsel.

6 Let me say this before we actually get into all
7 the questioning. We're conducting an experiment here
8 in Richland County this year, especially in the
9 criminal courts. We're identifying jurors by their
10 jury number. So if any of you have a reason to
11 respond to any of the questions that I ask, when I
12 ask you to stand, if you'll another give me your jury
13 number. Everybody look at their cards. And we're
14 not using your name.

15 Jurors we've found feel a little more
16 comfortable identifying themselves by number as
17 opposed by name, particularly in the criminal court
18 system. And perhaps you'll understand that as we go
19 along. So if you will identify yourself by a number
20 if I ask you any question that you have to respond
21 to.

22 All right. Let me ask in addition to that, you
23 probably met your Fifth Judicial elected solicitor
24 yesterday, Mr. Barney Giese. I need know if any
25 member of the jury panel is related by blood or

1 connected by marriage or employment or a close
2 personal acquaintance of Mr. Barney Giese who is the
3 actual solicitor in charge of this district? Any
4 member of the jury panel?

5 Any member of the jury panel know anybody that
6 works for the Solicitor's Office in Richland County?
7 Any member of your family or any close personal
8 acquaintance that works for the Solicitor's Office?
9 Yes, sir. Your number, please. If you'll stand.

10 *JUROR:* 190.

11 *THE COURT:* All right. I've got a list up here.
12 So I just need to mark it down. 190 is towards the
13 back. Yes, sir. And what is your connection with --

14 *JUROR:* I grew up with John Meadors.

15 *THE COURT:* John Meadors?

16 *JUROR:* Yeah. Does he still work there?

17 *THE COURT:* I think he does. Yes. All right,
18 sir. Mr. 190, would that fact in any way interfere
19 with your ability to give both the State and the
20 defendant a fair and impartial trial in this case?

21 *JUROR:* Probably.

22 *THE COURT:* All right. Thank you very much,
23 Mr. 190. Anybody else know any member of the staff
24 of the Solicitor's Office?

25 All right. Any member of the jury panel or any

1 member of your family employed in law enforcement?
2 Now, law enforcement generally speaking is
3 represented, or the State actually represents law
4 enforcement, if you want to put it that way, in the
5 processing of criminal cases. So I need to know if
6 any member of the jury panel or any member of your
7 family is employed by law enforcement. That could be
8 anything from the Richland County Sheriff's Office,
9 the Columbia City Police Department, SLED, State Law
10 Enforcement Division, the Forest Acres Police
11 Department, any military police department, FBI, any
12 type of agency that is a law enforcement agency;
13 either you or any member of your family or close
14 personal acquaintance work for. Yes, ma'am. Your
15 number, please.

16 **JUROR:** 27.

17 **THE COURT:** All right. Yes, ma'am. Can you
18 tell me briefly?

19 **JUROR:** My husband is retired SLED Agent Paul
20 Nintensio.

21 **THE COURT:** Okay. Retired SLED?

22 **JUROR:** Mm-hmm (affirmative).

23 **THE COURT:** Is he employed now?

24 **JUROR:** Pardon?

25 **THE COURT:** Is he employed now?

1 *JUROR:* No. He is retired. And then my
2 stepsister is a fingerprint examiner for Richland
3 County.

4 *THE COURT:* Okay. Ms. 27, would that fact in
5 any way interfere with your ability to give both the
6 State --

7 *JUROR:* Absolutely not.

8 *THE COURT:* -- and the defendant a fair and
9 impartial trial in this case?

10 *JUROR:* Absolutely.

11 *THE COURT:* It wouldn't?

12 *JUROR:* Absolutely fair. I would feel good
13 about --

14 *THE COURT:* You could be fair?

15 *JUROR:* I could be fair.

16 *THE COURT:* Okay. Thank you very much, Ms. 27.
17 Yes, ma'am.

18 *JUROR:* Juror number 3.

19 *THE COURT:* Yes, ma'am, number 3.

20 *JUROR:* My brother-in-law works for USC Police
21 Department.

22 *THE COURT:* Your brother-in-law?

23 *JUROR:* Yes.

24 *THE COURT:* Okay. Ms. number 3, would that fact
25 in any way interfere with your ability to give both

1 the State and defendant a fair and impartial trial in
2 this case?

3 *JUROR:* No.

4 *THE COURT:* This case, I will tell you, does not
5 involve the University or the University Police
6 Department. Okay?

7 *JUROR:* Okay.

8 *THE COURT:* Thank you, ma'am, number 3.
9 Number --

10 *JUROR:* Number 136.

11 *THE COURT:* 136?

12 *JUROR:* Mm-hmm (affirmative). My husband is a
13 South Carolina Highway Patrolman.

14 *THE COURT:* All right. Ms. 136, I will tell
15 that you the South Carolina Highway Patrol is not
16 involved in this case. And I need to ask you if the
17 fact that your husband is a member of the South
18 Carolina Highway Patrol, would that fact interfere
19 with your ability to be fair and impartial to both
20 the State and the defense?

21 *JUROR:* No.

22 *THE COURT:* Thank you very much, Ms. 136. Yes,
23 ma'am.

24 *JUROR:* 194.

25 *THE COURT:* Let me get your number. Yes, ma'am.

1 *JUROR:* My husband was a State Trooper, and I'm
2 also in law enforcement.

3 *THE COURT:* All right. And what department are
4 you with, ma'am?

5 *JUROR:* Irmo.

6 *THE COURT:* All right. Ms. 194, would that
7 fact, actually both facts, interfere with your
8 ability to give both the State and the defendant a
9 fair and impartial trial in this case?

10 *JUROR:* No, sir.

11 *THE COURT:* I can't hear you.

12 *JUROR:* No, sir.

13 *THE COURT:* Okay. Thank you very much. Yes,
14 ma'am.

15 *JUROR:* 123.

16 *THE COURT:* 123.

17 *JUROR:* My nephew is a policeman at Trenholm
18 Road.

19 *THE COURT:* Who does he work for? Do you know?
20 Does he work for the City or for the Sheriff's
21 Department?

22 *JUROR:* City.

23 *THE COURT:* He works for the City?

24 *JUROR:* Mm-hmm (affirmative).

25 *THE COURT:* I'm sorry. You are 12 --

1 *JUROR:* 123.

2 *THE COURT:* 3. I'm sorry. Okay. Ms. 123,
3 would that fact interfere with your ability to be
4 fair and impartial to both the State and the defense?

5 *JUROR:* I don't think so.

6 *THE COURT:* All right. Thank you very much,
7 Ms. 123. And that was your son-in-law?

8 *JUROR:* No, no. That's my nephew.

9 *THE COURT:* Nephew. I'm sorry. I didn't write
10 it down.

11 Does any member regularly contribute to or
12 support or volunteer for groups that have as their
13 primary purpose the support of law enforcement for
14 victims' rights?

15 Now, let me give you some examples of what I'm
16 talking about. Mothers Against Drunk Driving,
17 Students Against Drunk Driving, CAVE which is
18 Citizens Against Violence, Sister Care; any of these
19 types of groups, the Highway Troopers' Association or
20 the Sheriff's Association, any of these groups that
21 you regularly support either by donation or by
22 volunteering your time, things of that nature. Any
23 member of the jury panel either support, as I say, by
24 contribution or by volunteering your services, things
25 like that, for any of these types of causes? Any

1 member of the jury panel? Yes, ma'am. And your
2 number again.

3 *JUROR:* 136. Being a trooper's wife, we do
4 support the Troopers' Association.

5 *THE COURT:* All right. And your number again
6 was?

7 *JUROR:* 136.

8 *THE COURT:* 136. Yes, ma'am. Thank you, ma'am.
9 Anybody else? There is that other Troopers
10 Association.

11 *JUROR:* Troopers.

12 *THE COURT:* Yes, ma'am. And your number again
13 was?

14 *JUROR:* 194.

15 *THE COURT:* 194. Okay. Anybody else? The
16 Troopers' Association is not doing too well today.
17 Sister Care. Any of these groups? All right. All
18 right, ladies and gentlemen.

19 The defendant in this case today is Mr. Octavia
20 Middleton. Mr. Middleton, will you stand and face
21 the jury, please. Any member of the jury panel
22 related by blood or connected by marriage or
23 employment or close personal acquaintance of
24 Mr. Octavia Middleton, the gentleman with the white
25 shirt on? Anybody know Mr. Middleton, have any

1 connection with Mr. Middleton?

2 He is represented in this matter today by
3 Mr. Steve Hisker, an attorney practicing here in
4 Columbia. Any member of the jury panel related by
5 blood or connected by marriage or employment or close
6 personal acquaintance of Mr. Steve Hisker or perhaps
7 have been represented by him either now or in the
8 past? Any member of the jury panel? All right.
9 Thank you very much, gentlemen.

10 All right, ladies and gentlemen. I'm going to
11 call out a list of names. These people are proposed
12 to be witnesses in this case. Any of these witness's
13 names whom I call at the present time, if you'll
14 please stand so the jury can identify you.

15 These people may or may not be called, but I
16 need to know if you know or have any connection with
17 any of the following witnesses. And the question is
18 the same as to each; that is, is any member of the
19 jury panel related by blood or connected by marriage
20 or employment or a close personal acquaintance of any
21 one of the following individuals.

22 Sergeant Shawn McDaniels. I'll tell you what.
23 To keep you from twisting your necks, if anybody
24 stands up back there, I'll tell you so you can turn
25 around. I don't want anybody to walk out of here

1 with a crick in their neck. But there may be some
2 witnesses located in the back, and I'll tell you if
3 any of them stand up.

4 Investigator Scott Faust. Sergeant John Ewing.
5 Eliana Garcia. This is Ms. Garcia is in the back.
6 Anybody know Ms. Garcia? Investigator Gallegos.
7 Walter Graves. Investigator Matt Ellis. Randy
8 Wigfall. Mr. Wigfall is standing in the back.

9 Jerry Gordon. Mr. Gordon is standing in the
10 back. Walter Huggins. Mr. Huggins is standing in
11 the back. Regina Pinckney. Ms. Pinckney is standing
12 in the back. Investigator Dave Moffatt. Anita
13 Thompson. Ms. Thompson is standing in the back with
14 the pink dress on. Sergeant David Linfert.
15 Investigator Travis Holdorf. Sergeant Eric Barnes.
16 Christopher Thompson. Jessica Richardson. Frank
17 Hughey. Karl Jones. There is Mr. Jones who is
18 standing in the back.

19 Dennis Goodson. Marvin Goodson. Deputy
20 Zalewska with Richland County. Jessica Raines.
21 Terry Roundtree. Margaret Fouty, Department of Motor
22 Vehicles. William Rickenbaker. Investigator Bill
23 Mann. Rakim Livingston. Heather Ramos. Dan Davis,
24 Tasha Harrington. Danette Robinson.

25 Sergeant Anna Clemons. Lieutenant Zane Padgett.

1 Investigator Trish Collins. Investigator Robert
2 Otis. Investigator Lonnie Gross. Investigator Stan
3 Richards. Investigator Gray Amick, Sergeant Sandy
4 Laney. Deputy Hunger. Sergeant Thomas Fail, Deputy
5 Larry Payne. Mr. Payne is standing here. EMT Joy
6 Cameron. Investigator Ray Livingston. Ann Neeley.
7 A. E. Kease, K-E-A-S-E. Officer Douglas Shuler.

8 Vanessa Hiller. Antoinette Sutton. Tena Goff,
9 Richland County. Dr. Clay Nichols. Samuel Reighley
10 or Riley (phonetic), R-E-I-G-H-L-E-Y, with SLED.
11 Joseph Powell with SLED. David Collins, Richland
12 County Sheriff's Department. David Bell, Richland
13 County Sheriff's Department. Lieutenant Lancy Weeks.
14 Investigator Bill O'Neill. Paul Mead. Jennifer
15 Blair, works at 911. Carol Brooks at SLED. Dennis
16 (sic) Eargle at SLED. Christine Montgomery
17 Barrickman with SLED. Harry Dukes. Andy Jones. Bev
18 Crane, the Richland County Sheriff's Department. And
19 Brit Hunt.

20 All right, ladies and gentlemen. That's a list
21 of potential witnesses in this case that may or may
22 not all be called.

23 **MR. HISKER:** Judge, you have a juror.

24 **MS. CAMPBELL:** And, Judge, Captain Stan Smith
25 was left off the list.

1 *THE COURT:* All right. Captain Stan Smith.

2 *JUROR:* I'm juror number 4, and I know one of
3 the witnesses.

4 *THE COURT:* Okay. And which one, ma'am?

5 *JUROR:* Mr. Huggins.

6 *THE COURT:* Huggins?

7 *JUROR:* Yes, sir.

8 *THE COURT:* Let me see if I can find you now.

9 *MR. HISKER:* We may need to approach on this
10 one, Judge.

11 *THE COURT:* Well, just let me find it on the
12 list. Walter Huggins. Is that right, ma'am?

13 *JUROR:* I call him Mr. Huggins. He's a friend
14 of my husband's. I don't know his first name.

15 *THE COURT:* Oh, I see. You call him
16 Mr. Huggins. And, Mr. Huggins, with the white shirt,
17 --

18 *JUROR:* Yes, sir.

19 *THE COURT:* -- that's him?

20 *JUROR:* Yes, sir.

21 *THE COURT:* Okay. You say he's a friend of your
22 husband?

23 *JUROR:* Yes, sir. Family.

24 *THE COURT:* Does he come to your house, you go
25 to his house, your husband go to his house?

1 *JUROR:* No, sir.

2 *THE COURT:* I mean, is he that close? Do you
3 live in the neighborhood?

4 *JUROR:* No, sir.

5 *THE COURT:* Does he know him at work, from work,
6 or they grow up together? Can you tell me a little
7 bit about it?

8 *JUROR:* Just business.

9 *THE COURT:* Business?

10 *JUROR:* Yes, sir.

11 *THE COURT:* Okay. And, yes, sir.

12 *JUROR:* Yes, sir. My name?

13 *THE COURT:* Which one?

14 *JUROR:* I'm juror number 200. Matt Ellis and
15 Eric Barnes, Sergeant Barnes.

16 *THE COURT:* All right. How do you know Mr.
17 Ellis and Mr. Barnes?

18 *JUROR:* Mr. Ellis and I were in business a long
19 time ago, in the jewelry business.

20 *THE COURT:* Business?

21 *JUROR:* Yes, sir. And Sergeant Barnes attends
22 my church, and we're friends. He is my deacon.

23 *THE COURT:* All right. I'm sorry. What was
24 your number again?

25 *JUROR:* Number 200.

1 *THE COURT:* 200. Would those personal
2 relationships, would that in any way interfere with
3 your ability to give both the State and the defendant
4 a fair and impartial trial in this case?

5 *JUROR:* No, sir.

6 *THE COURT:* Even if they testified, would you
7 tend to believe them more than you would believe any
8 other witness in this case?

9 *JUROR:* Yes, sir.

10 *THE COURT:* You would?

11 *JUROR:* (Nods head affirmatively).

12 *THE COURT:* That question always sort of --

13 *JUROR:* Once you put it that way.

14 *THE COURT:* Once you put it that way. And your
15 number, please?

16 *JUROR:* I am 18.

17 *THE COURT:* Yes, ma'am.

18 *JUROR:* I know Joy, EMS.

19 *THE COURT:* The EMS lady I mentioned?

20 *JUROR:* Yes, sir.

21 *THE COURT:* Gosh. I called out so many. Oh.
22 Joy Cameron?

23 *JUROR:* Yes, sir.

24 *THE COURT:* How do you know Ms. Cameron?

25 *JUROR:* My husband works for the Columbia Fire

1 Department and just kind of the same circles of
2 people.

3 **THE COURT:** All right. Is it what you'd call a
4 fairly close personal relationship?

5 **JUROR:** No, sir.

6 **THE COURT:** It's more of a business type
7 relationship?

8 **JUROR:** We have been at some of the same --

9 **THE COURT:** Functions?

10 **JUROR:** Yes, sir. But not really a personal
11 friend.

12 **THE COURT:** Okay. Would that fact in any way
13 interfere with your ability to give the State and
14 defendant a fair and impartial trial in this case,
15 ma'am?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you very much. And, yes,
18 ma'am.

19 **JUROR:** 169. I think Stan Smith is a friend of
20 my uncle's, Bill Salisbury. I don't know whether I
21 should even say that or not. But I want to serve.
22 So, I mean, I can be impartial or partial.

23 **THE COURT:** And your number again was what?

24 **JUROR:** 169.

25 **THE COURT:** 169. All right. And you say your

1 husband you think or your uncle?

2 *JUROR:* My uncle was a friend of Stan Smith's.

3 *THE COURT:* Okay.

4 *JUROR:* That's all I can say.

5 *THE COURT:* And do you and your family have any
6 closer relationship with him than that?

7 *JUROR:* No, sir.

8 *THE COURT:* Okay. Do you know him by name or do
9 you know him to speak to personally?

10 *JUROR:* I've never met him. I'm just meeting
11 him for the first time. But I've corresponded with
12 him in a way.

13 *THE COURT:* Okay. I see. Would that fact,
14 Ms. 169, in any way interfere with your ability to
15 give -- or would it interfere with your ability to
16 give the State and defendant a fair and impartial
17 trial?

18 *JUROR:* No, sir. No, sir.

19 *THE COURT:* All right. Thank you very much.
20 Anybody else?

21 All right, ladies and gentlemen. I'm going to
22 go through -- I told you I was going to tell you a
23 little bit about the indictments in this case. And
24 I'm going to describe to you the charges that are
25 brought by the State against Mr. Octavia Middleton.

1 And there are several. And I'm just going to go
2 through them one at a time and then I'm going to ask
3 you some questions about whether you know anything
4 about this case.

5 Mr. Middleton is charged on October (sic) the
6 8th, 2005, so we're talking about two years ago, in
7 August, with a burglary in the first degree, and that
8 is entering the dwelling of another during the hours
9 of darkness at [REDACTED]. And what section
10 of Columbia is that in?

11 *JUROR:* Northeast. Near to Blue Cross/Blue
12 Shield tower right off the highway.

13 *THE COURT:* I couldn't -- who was walk talking?

14 *JUROR:* Oh. I'm sorry.

15 *THE COURT:* That's all right. This allegedly
16 took place at [REDACTED], [REDACTED], [REDACTED]. And
17 there are two counts of that that he's charged with,
18 entering this dwelling, one of which belonged to
19 Eliana Garcia, the witness who stood up in the back,
20 without the consent of the owner of these two
21 properties. And it's my understanding that these two
22 properties are in an apartment complex and are
23 situated maybe across the hall from each other, and
24 that's why there are two charges of burglary in the
25 first degree.

1 The second set of charges charge Mr. Middleton
2 are five counts of armed robbery on the same day at
3 the same location, and that Mr. Octavia Middleton did
4 take, commit a robbery on Anita Thompson; and these
5 may have been some of the witnesses who stood up in
6 the back, Eliana Garcia, Jerry Gordon, Randy Wigfall
7 and Walter Huggins. So he's charged not only with
8 two counts of burglary in the first degree but also
9 with five counts of armed robbery.

10 On the same day he is charged with, at the same
11 time, three counts of assault and battery of a high
12 and aggravated nature in that he is charged with
13 committing an assault upon Walter Huggins. He is
14 charged with committing an assault with intent to
15 kill Walter Huggins. He is charged with assault and
16 battery of a high and aggravated nature on Eliana
17 Garcia and also on Walter Graves. So there are three
18 charges of assault and battery of a high and
19 aggravated nature and one count of assault with
20 intent to kill.

21 Mr. Middleton is also charged in the last
22 indictment with murder in that on the same day, at
23 the same time, the same location, he did kill one
24 James Greene, Mr. James Greene, by means from a
25 shotgun October (sic) the 8th, 2005. As I said, Mr.

1 Middleton is presumed innocent of these charges at
2 the start of this trial.

3 Now, what I need to know, any member of the jury
4 panel know anything about this case? Any member of
5 the jury panel live in the neighborhood? There might
6 have been discussions about it, heard about it on the
7 press, television, radio, newspapers, anything of
8 that nature. Any discussions that you may have had
9 with neighbors about it, just community talk, talk at
10 church about this event that occurred in August of
11 2005? Any member of the jury panel know anything
12 about this case?

13 **JUROR:** I'm juror number 44. I live in that
14 neighborhood, but I just moved there. But I just
15 moved.

16 (Note - this juror is the juror who mentioned
17 the Blue Cross tower earlier).

18 **THE COURT:** You have no knowledge about this
19 incident?

20 **JUROR:** No, sir. I just moved there a year ago.

21 **THE COURT:** Thank you very much. Yes, sir. I
22 need your number, please.

23 **JUROR:** Number 100.

24 **THE COURT:** Just even 100?

25 **JUROR:** Yes, sir.

1 *THE COURT:* Okay. Yes, sir, Mr. 100. Can you
2 tell me what you may have had heard?

3 *JUROR:* I live in an adjacent neighborhood.

4 *THE COURT:* Do you know anything about this
5 case?

6 *JUROR:* No, sir.

7 *THE COURT:* Haven't heard anything about it?

8 *JUROR:* Not that I recall.

9 *THE COURT:* Sir?

10 *JUROR:* Not that I recall. No, sir.

11 *THE COURT:* Okay. Thank you very much, Mr. 100.

12 Ma'am, on the front row. And your number, please?

13 What was your number again, please?

14 *JUROR:* 4.

15 *THE COURT:* Number 4?

16 *JUROR:* Yes, sir.

17 *THE COURT:* I guess I just have to ask you since
18 your husband knows one of the alleged victims in this
19 case if in any way you had any, you or he had any
20 conversation or have had any conversation with the
21 gentleman?

22 *JUROR:* I haven't. And he hasn't said anything
23 to me. I don't know anything about it. He never
24 spoke to me about it. I don't know what him and
25 Mr. Huggins talked about.

1 **THE COURT:** That's what I need to know. Just a
2 natural question since you had some connection with
3 one of the witnesses in this case.

4 **JUROR:** Yes, sir.

5 **THE COURT:** Anybody else? All right, ladies and
6 gentlemen. I need to ask if any member of the jury
7 panel has been a victim of a crime of violence? Any
8 member of the jury panel or any member of your
9 family? When I ask you to stand, I'm not going to go
10 into great detail. I just need to know briefly what
11 type of -- who it was, whether it was you or a member
12 of your family, what type of violent crime it may
13 have been and when did it take place, if it took
14 place ten years ago or if it took place last week.
15 So if you'll just give me sort of -- yes, ma'am. And
16 your number, please?

17 **JUROR:** Juror 79.

18 **THE COURT:** Yes, ma'am, Ms. 79.

19 **JUROR:** My father-in-law was murdered three
20 years ago.

21 **THE COURT:** Was that in Richland County?

22 **JUROR:** Darlington county.

23 **THE COURT:** Darlington? Ma'am, that life
24 experience, would that in any way interfere with your
25 ability to give both the State and the defendant --

1 *JUROR:* Absolutely.

2 *THE COURT:* Thank you very much, ma'am. Yes,
3 ma'am.

4 *JUROR:* Number 4 again.

5 *THE COURT:* Number 4.

6 *JUROR:* I think it was 2004. I'm not sure. Me
7 and my family lived off of Percival Road and we got
8 robbed.

9 *THE COURT:* Were robbed?

10 *JUROR:* My daughter was held. And my husband
11 got shot.

12 *THE COURT:* All right. And you say how long
13 ago?

14 *JUROR:* I think it was 2004.

15 *THE COURT:* 2004.

16 *JUROR:* Mm-hmm (affirmative).

17 *THE COURT:* All right. Ms. 4, I've got to ask
18 you the question, would that experience, that life
19 experience that you've had, interfere with your
20 ability to give a fair and impartial trial in this
21 case?

22 *JUROR:* I don't think so. It just was a bad
23 thing.

24 *THE COURT:* I understand. Thank you very much,
25 Ms. 4. She was up first. Yes, ma'am.

1 *JUROR:* Number 82.

2 *THE COURT:* 82?

3 *JUROR:* Yes. Three years ago my mother's home
4 was robbed twice.

5 *THE COURT:* Your mother?

6 *JUROR:* Yes.

7 *THE COURT:* Was that here in Columbia?

8 *JUROR:* Yes.

9 *THE COURT:* Okay. You say three years ago?

10 *JUROR:* Yes.

11 *THE COURT:* Ms. 82, would that fact in any way
12 interfere with your ability to give both the State
13 and the defendant a fair and impartial trial in this
14 case?

15 *JUROR:* Yes, it would.

16 *THE COURT:* All right. Thank you, ma'am. Yes,
17 sir, your number, please?

18 *JUROR:* Number 16. A victim of an armed
19 robbery, possibly nine years ago.

20 *THE COURT:* Okay. Mr. 16, would that life
21 experience you've had, would that interfere with your
22 ability to give both the State and defendant a fair
23 and impartial trial in this case?

24 *JUROR:* No, sir.

25 *THE COURT:* Thank you very much, sir. Yes,

1 ma'am, on the front row.

2 *JUROR:* Juror number 22.

3 *THE COURT:* Ms. 22.

4 *JUROR:* Mm-hmm (affirmative). My cousin was

5 killed in 1984.

6 *THE COURT:* A violent crime?

7 *JUROR:* Yes.

8 *THE COURT:* All right. Would that fact in any

9 way interfere with your ability to give both the

10 State and defendant a fair and impartial trial?

11 *JUROR:* No, sir.

12 *THE COURT:* And that was your cousin, did you

13 say?

14 *JUROR:* Yes, sir.

15 *THE COURT:* Thank you very much. Yes, ma'am.

16 *JUROR:* 29.

17 *THE COURT:* Ms. 29.

18 *JUROR:* A sister, victim of sexual assault about

19 30 years ago.

20 *THE COURT:* All right. Would that fact in any

21 way interfere with your ability to give both the

22 State and the defendant a fair and impartial trial in

23 this case?

24 *JUROR:* No.

25 *THE COURT:* Thank you very much, Ms. 29. All

1 right. I'm going to turn that around, the question
2 around. Any member of the jury panel or any member
3 of your family been accused of committing a violent
4 crime? And by that I mean to the point that law
5 enforcement was involved, not just sort of minor type
6 things. But any member of the jury panel or any
7 member of your family been accused of committing a
8 violent crime, that being, as I say, something that
9 actually went so far as to involve law enforcement?

10 All right. Ladies and gentlemen, now that you
11 know the charges in this case, you know the
12 individuals that are involved, and I've made some
13 notes with regard to several of you who have
14 indicated you would feel it would be hard for you to
15 be fair and impartial, and you don't need to restate
16 that to me; but I'm going to ask if any member of the
17 jury panel other than those people who have told me
18 that, know of any reason based on the charges, based
19 on anything else that you may know or feel about this
20 case, know of any other reason why you think you
21 could not be fair and impartial to both parties, both
22 the State and the defendant in this case? Any member
23 of the jury panel?

24 All right. All right, counsel. Approach the
25 bench, please.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** Ms. Falcone.

3 (Whereupon, a bench conference is had between
4 the Court and the clerk).

5 **THE COURT:** All right, Madam Clerk, give us a
6 jury, please.

7 **THE CLERK:** Yes, sir. Ladies and gentlemen, if
8 I call your number, please come to the microphone at
9 the center of the courtroom bringing any personal
10 belongings with you. And state your number only and
11 your occupation. Number 169.

12 (White female)

13 **JUROR:** 169. I'm a teacher at South Carolina
14 Department of Juvenile Justice.

15 **THE CLERK:** What says the State?

16 **MS. CAMPBELL:** Please present the juror.

17 **THE CLERK:** What says the defense?

18 **MR. HISKER:** Please excuse the juror for this
19 case.

20 **THE CLERK:** Please have a seat in the back of
21 the courtroom. Number 46.

22 (Black female)

23 **JUROR:** Number 46. I'm Theola Collins. I'm
24 retired.

25 **THE CLERK:** What says the State?

1 **MS. CAMPBELL:** Please present the juror.
2 **THE CLERK:** What says the defense?
3 **MR. HISKER:** Please seat the juror.
4 **THE CLERK:** Please have a seat in the jury box.
5 **THE BAILIFF:** This way, please. Watch your
6 step.
7 **THE CLERK:** Number 4.
8 (Black female)
9 **JUROR:** My name is Cathy Amaker, and I'm a diet
10 service coordinator.
11 **THE CLERK:** What says the State?
12 **MS. CAMPBELL:** Please present the juror.
13 **THE CLERK:** What says the defense?
14 **MR. HISKER:** Please excuse the juror from this
15 case.
16 **THE CLERK:** Please have a seat in the back of
17 the courtroom. If you'll just remember to state your
18 number only, please.
19 **JUROR:** Oh, I'm sorry.
20 **THE COURT:** That's all right..
21 **THE CLERK:** Number 107.
22 (White male)
23 **JUROR:** Number 107. I work at the Shandon
24 Baptist Church in the language department.
25 **THE CLERK:** What says the State?

1 **MS. CAMPBELL:** Please seat the juror.

2 **THE CLERK:** What says the defense?

3 **MR. HISKER:** Please excuse the juror from this
4 case.

5 **THE CLERK:** Please have a seat in the back of
6 the courtroom. Number 132.

7 (Black female)

8 **JUROR:** Number 132. I am an internal auditor.
9 I work for Florence & McInnis.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Beg the Court's indulgence.
12 Please excuse the juror.

13 **THE CLERK:** Please have a seat in the back of
14 the courtroom. Number 27.

15 (White female)

16 **JUROR:** Number 27. I'm a private investigator.

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please present the juror.

19 **THE CLERK:** What says the defense?

20 **MR. HISKER:** Please excuse the juror from this
21 case.

22 **THE CLERK:** Please have a seat in the back of
23 the courtroom. Number 18.

24 (White female)

25 **JUROR:** I am number 18. I work at Blue Cross

1 and Blue Shield in marketing.

2 *THE CLERK:* What says the State?

3 *MS. CAMPBELL:* Please present the juror.

4 *THE CLERK:* What says the defense?

5 *MR. HISKER:* Please excuse the juror from this
6 case.

7 *THE CLERK:* Please have a seat in the back of
8 the courtroom. Number 34.

9 (White male)

10 *JUROR:* Number 34. I'm a librarian at the
11 University of South Carolina.

12 *THE CLERK:* What says the State?

13 *MS. CAMPBELL:* Please present the juror.

14 *THE CLERK:* What says the defense?

15 *MR. HISKER:* Please seat the juror.

16 *THE CLERK:* Please have a seat in the jury box.
17 Number 64.

18 (White female)

19 *JUROR:* Number 64. I'm a self-employed interior
20 designer. I'm also an artist and I periodically
21 substitute teach.

22 *THE CLERK:* What says the State?

23 *MS. CAMPBELL:* Please present the juror.

24 *THE CLERK:* What says the defense?

25 *MR. HISKER:* Please seat the juror.

1 **THE CLERK:** Please have a seat in the jury box.

2 Number 44.

3 (Black male)

4 **JUROR:** I'm juror number 44. I work with the
5 Department of Mental Health, security specialist.

6 **THE CLERK:** What says the State?

7 **MS. CAMPBELL:** Please excuse the juror.

8 **THE CLERK:** Please have a seat in the back of
9 the courtroom. Number 84.

10 (White female)

11 **JUROR:** Number 84. I'm an IT manager for
12 Silvair Corporation.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. HISKER:** Please seat the juror.

17 **THE CLERK:** Please have a seat in the jury box.
18 Number 88.

19 (Black female)

20 **JUROR:** Juror number 88. I'm a mortgage lone
21 officer for Bank of America Mortgage.

22 **THE CLERK:** What says the State?

23 **MS. CAMPBELL:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. HISKER:** Please seat the juror.

1 **THE CLERK:** Please have a seat in the jury box.

2 Number 145.

3 (White female)

4 **JUROR:** I'm number 145. I'm retired from
5 Richland School District two.

6 **THE CLERK:** What says the State?

7 **MS. CAMPBELL:** Please present the juror.

8 **THE CLERK:** What says the defense?

9 **MR. HISKER:** Please seat the juror.

10 **THE CLERK:** Please have a seat in the jury box.

11 Number 205.

12 (White female)

13 **JUROR:** Number 205. I'm in the billing
14 department at Columbia Neurosurgical.

15 **THE CLERK:** What says the State?

16 **MS. CAMPBELL:** Please present the juror.

17 **THE CLERK:** What says the defense?

18 **MR. HISKER:** Please seat the juror.

19 **THE CLERK:** Please have a seat in the jury box.

20 Number 32.

21 (White female)

22 **JUROR:** I am number 32 and I work with the
23 Department of Disabilities.

24 **THE CLERK:** What says the State?

25 **MS. CAMPBELL:** Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. HISKER:** Please excuse the juror for this
3 case.

4 **THE CLERK:** Please have a seat in the back of
5 the courtroom. Number 48.

6 (White female)

7 **JUROR:** Juror 48. I work as a bookkeeper at
8 Carolina First operations center in the information
9 department.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MR. HISKER:** Please seat the juror.

14 **THE CLERK:** Please have a seat in the jury box.
15 Number 173.

16 (White male)

17 **JUROR:** I am juror number 173. I'm a drywall
18 service technician.

19 **THE CLERK:** What says the State?

20 **MS. CAMPBELL:** Please present the juror.

21 **THE CLERK:** What says the defense?

22 **MR. HISKER:** Please excuse the juror for this
23 case.

24 **THE CLERK:** Please have a seat in the back of
25 the courtroom. Number 128.

1 (White female)
2 JUROR: Number 128. I'm an at-home mother.
3 THE CLERK: What says the State?
4 MS. CAMPBELL: Please present the juror.
5 THE CLERK: What says the defense?
6 MR. HISKER: Please seat the juror.
7 THE CLERK: Please have a seat in the jury box.
8 Number 100.
9 (Black male)
10 JUROR: Number 100. I'm retired.
11 THE CLERK: What says the State?
12 MS. CAMPBELL: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. HISKER: Please seat the juror.
15 THE CLERK: Please have a seat in the jury box.
16 Number 119.
17 (White male)
18 JUROR: I'm juror 119. I'm a salesman.
19 THE CLERK: What says the State?
20 MS. CAMPBELL: Please present the juror.
21 THE CLERK: What says the defense?
22 MR. HISKER: Please seat the juror.
23 THE CLERK: Please have a seat in the jury box.
24 Number 117.
25 (White male)

1 **JUROR:** I'm number 117. I am the director of
2 the South Carolina Center for Department of Health
3 and Environmental Control for preparedness.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please seat the juror.

6 **THE CLERK:** What says the defense?

7 **MR. HISKER:** Please seat the juror.

8 **THE COURT:** Two alternates.

9 **THE CLERK:** Yes, sir. Number 77.

10 (White male)

11 **JUROR:** Juror 77. I'm a registered investment
12 advisor with Acts & Equitable Life Insurance Company.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. HISKER:** Please excuse the juror.

17 **THE CLERK:** Please have a seat in the back of
18 the courtroom. Number 3.

19 (Black female)

20 **JUROR:** Juror number. 3. I work for USC
21 parking services.

22 **THE CLERK:** What says the State?

23 **MS. CAMPBELL:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. HISKER:** Please excuse the juror from this

1 case.

2 **THE CLERK:** Please have a seat in the back of
3 the courtroom. Number 210.

4 (White female)

5 **JUROR:** I'm juror number 210. I'm employed with
6 Richland School District Two as a director's
7 secretary.

8 **THE CLERK:** What says the State?

9 **MS. CAMPBELL:** Please excuse the juror.

10 **THE CLERK:** Please have a seat in the back of
11 the courtroom. Number 96.

12 (White male)

13 **JUROR:** Number 96. I'm a child superintendent.

14 **THE CLERK:** Does the State challenge for cause?

15 **MS. CAMPBELL:** Please present the juror.

16 **THE CLERK:** Does the defense challenge for
17 cause?

18 **MR. HISKER:** Please seat the juror.

19 **THE CLERK:** Please have a seat in the jury box.
20 Number 78.

21 (Black female)

22 **JUROR:** I'm juror 78. I'm a service consultant
23 with AT&T.

24 **THE CLERK:** What says the State?

25 **MS. CAMPBELL:** Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. HISKER:** Please seat the juror.

3 **THE CLERK:** Please have a seat in the jury box.

4 **THE COURT:** Any objection to the jury selection
5 process?

6 **MS. CAMPBELL:** Beg the Court's indulgence.

7 Nothing from the State.

8 **THE COURT:** From the defense?

9 **MR. HISKER:** The defense has a motion, Judge.

10 **THE COURT:** Approach the bench.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** All right. Ladies and gentlemen who
13 were not selected on this panel, I would ask you to
14 stay but I don't think you'd like that. Seriously,
15 I'm pretty sure we're going to need your services on
16 some civil juries. This trial is liable to last the
17 rest of the week. I don't know. But it's my
18 understanding that one of the civil judges is waiting
19 for a panel.

20 So I'm going to ask you now to return to the
21 jury assembly room for further instructions. I want
22 to thank all of you for coming, being willing to
23 serve and being candid with me during this
24 qualification process. So thank you very much. You
25 may now return to the jury assembly room.

1 All right, Ladies and Gentlemen of the Jury.
2 There are just a couple of short matters I need to
3 take up with the attorneys before we actually start
4 the trial. So I think it would be a good time to
5 take a short break. I'm going to ask you to go with
6 the bailiffs to your jury room. This will be your
7 new home for the next couple of days. It's located
8 on this floor. It's not back downstairs in the
9 assembly room.

10 I want you to just relax for a few minutes and
11 maybe get acquainted with each other because I'm
12 going to ask you during this break to select one of
13 your members to be the foreperson of the jury. That
14 person will take the seat where the lady with the
15 white sweater is seated on the front row and will
16 maintain that seat throughout the trial. The rest of
17 the seats don't have any names on them, so I just
18 want you to sit where you're comfortable.

19 All the witnesses will be testifying from the
20 witness stand here. If you have any difficulty in
21 hearing, just seat yourself so that you can hear
22 what's going on, see what's going on.

23 But as I say, during the break if you'll select
24 one of your members. That person will actually --
25 if the deliberations become necessary towards the end

1 of the trial, then that person will actually preside
2 in the jury room and will eventually write the
3 verdict, again if that becomes necessary towards the
4 end of the trial. So if you'll do that for me and
5 just let the bailiff know who you've selected as your
6 foreperson. And again, that person will take the
7 seat seated on the front row.

8 I'm going to ask you not discuss this case while
9 you're in the jury room because it would be improper
10 to start discussing the case now. You know very
11 little about it. Quite frankly, I don't know any
12 more about it than you do. I have just read these
13 indictments today. So until all the evidence is
14 presented and you hear all the testimony, it would be
15 improper to start discussing the case.

16 Get to know each other for a few minutes and
17 just relax. We'll call you when we're ready. It
18 will be probably ten or fifteen minutes. Thank you
19 very much.

20 (Jury out at 11:15 a.m.)

21 **THE COURT:** We'll stand at ease for about ten
22 minutes.

23 (Whereupon, a break is taken)

24 **THE COURT:** All right. Mr. Hisker.

25 **MR. HISKER:** Yes, sir. I just want to put two

1 matters on the record. First of all, I made a Batson
2 motion. It's my understanding the State has race
3 neutral reasons and those are going to be put on
4 the --

5 **THE COURT:** You made a Batson motion at the
6 bench, not on the record.

7 **MR. HISKER:** Yes, sir. And the State is
8 presenting race neutral reasons. They're going to
9 put those on the record.

10 **THE COURT:** All right. As to juror number 132.

11 **MS. CAMPBELL:** She works for the Columbia Urban
12 League which she did mention when she --

13 **THE COURT:** Any challenge to that race neutral
14 reason?

15 **MR. HISKER:** No, Your Honor. No, Your Honor.

16 **THE COURT:** All right. As to number 44.

17 **MS. CAMPBELL:** He had at least two prior arrests
18 for criminal domestic violence. And I think one was
19 a conviction. I'm not sure.

20 **THE COURT:** Any challenge to that race neutral
21 reason?

22 **MR. HISKER:** No, Your Honor.

23 **THE COURT:** I find both of those are race
24 neutral reasons, and the strikes will stand without
25 challenge.

1 **MR. HISKER:** Judge, the second matter is I'd
2 just like to put on the record that I take notice
3 that the Court read Christopher Thompson's name out
4 in voir dire. I would also like to put on the record
5 Christopher Thompson was not in the courtroom. The
6 juror did not see his face. No jurors responded that
7 they knew him. It is a very common name and I don't
8 think there is any prejudice to the defendant.

9 **THE COURT:** Well, in just reading the list
10 quickly and it came up and I just read it, nobody
11 responded. So I moved right on. So I don't think it
12 in any way prejudiced this jury.

13 **MS. CAMPBELL:** He is a potential witness in the
14 case should someone open the door.

15 **THE COURT:** Well, it is what it is.

16 **MR. HISKER:** But I'm satisfied with that.

17 **THE COURT:** All right. Thank you. Juror number
18 100 is the foreperson of the jury. Ready for the
19 jury? Ms. Campbell?

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** You ready for the jury?

22 **MR. HISKER:** The defense is ready.

23 **THE COURT:** Bring the jury, please.

24 **MS. CAMPBELL:** Mr. Goldberg will be opening.

25 **THE COURT:** Thank you. I look forward to it.

1 **MS. CAMPBELL:** Always good.

2 (Jury in at 11:37 a.m.)

3 **THE BAILIFF:** The jury is all present, Your
4 Honor.

5 **THE COURT:** Thank you very much. All right,
6 Madam Clerk. Will you swear the jury, please.

7 **THE CLERK:** Yes, sir. Ladies and Gentlemen of
8 the Jury, please stand and raise your right hand to
9 be sworn.

10 (Whereupon, the jury is sworn)

11 **THE CLERK:** Thank you. You may be seated.

12 **THE COURT:** All right. Thank you very much.
13 Mr. 100, I want to thank you for being willing to
14 serve as foreperson of this jury.

15 Now, ladies and gentlemen, before we actually
16 begin the trial I just want to take a few minutes to
17 talk to you about several things that may come up
18 during the course of the trial. But before we begin,
19 I want to tell you this trial probably will be
20 different from what you might expect. Many people do
21 not have the chance to attend actual court sessions
22 as you're now doing and think from watching
23 television or movies or reading books that trials are
24 always full of a lot of action and drama, things of
25 that nature.

1 And while these things may be true at times,
2 this trial is not for entertainment. It's a
3 fundamental part of our democracy, a search for the
4 truth in an effort to make sure that justice is done
5 between both parties before the court. Searching for
6 the truth, making sure that justice is done, is often
7 a slow, deliberate and repetitive process, the
8 opposite of what you may have seen on television or
9 in movies or read in books.

10 This courtroom is a place of honor dedicated to
11 the protection and preservation of citizens' rights
12 through what many have called the greatest justice
13 system ever created. The attorneys appearing before
14 you are advocates for the parties they represent, but
15 first and foremost they are officers of this court,
16 sworn to uphold the integrity and fairness of our
17 judicial system to help and assist you in a search
18 for the truth.

19 You should expect them to be professional,
20 competent, ethical in the representation of their
21 client's interest. And remember that you've just
22 taken an oath to try this case to reach a fair and
23 just verdict, and you are also expected to be
24 professional, reasonable and ethical. So I want to
25 thank you at this time for accepting this important

1 responsibility of jury service and for your
2 contribution today to our system of justice.

3 Now, as I told the full jury panel, we're about
4 to begin the case of The State vs. Octavia Middleton.
5 What I tell you now is intended to serve as an
6 introduction of the case. I'll instruct you as to
7 the law of the State of South Carolina as it applies
8 to this case later in the trial. And this will
9 merely be an explanation of the procedure we will
10 follow in the trial of this case so you may better
11 understand what may be taking place from time to
12 time.

13 Now, as I told you, the defendant is charged
14 with several indictments. He is charged with two
15 counts of breaking -- I'm sorry -- of burglary in the
16 first degree. He is charged with five counts of
17 armed robbery. He is charged with three counts of
18 assault and battery with intent to -- assault and
19 battery of a high and aggravated nature, one count of
20 assault with intent to kill and one count of murder.

21 That sounds like a lot of indictments, and it
22 is. I'm going to perhaps suggest something to you in
23 a few minutes about how you might keep up with it,
24 with each of the indictments. But I need to advise
25 you -- Billy, will you meet with my law clerk for

1 just a minute?

2 **THE BAILIFF:** I'll be glad to, Your Honor.

3 **THE COURT:** All right. Thank you. I explained
4 to you when we began that the indictments are just
5 that. They're just the charges that are brought into
6 court. They are not in any sense evidence of the
7 allegations that they contain. The defendant has
8 pled not guilty to each of these indictments, and the
9 State therefore has the burden of proving these
10 indictments, the elements of these indictments to you
11 beyond a reasonable doubt.

12 It will be your duty, ladies and gentlemen, to
13 decide whether the State has met that burden. Your
14 purpose as jurors is to find and determine the facts.
15 You are the sole judges of the facts. If at any time
16 I make any comment regarding the facts, you are to
17 disregard those comments. You are to determine the
18 facts from the testimony you hear and the other
19 evidence that's introduced into court.

20 It will be up to you to determine what
21 inferences may be properly drawn from that evidence.
22 It's especially important that you perform your duty
23 of determining the facts diligently and
24 conscientiously because ordinarily there is no way to
25 correct an erroneous determination of the facts by a

1 jury.

2 On the other hand and with equal emphasis, the
3 same law that makes you the judges of the facts makes
4 me the judge of the law. The law as given to you or
5 explained to you by the Court is the only law that
6 you may consider. You must accept it and follow it
7 even though you may disagree with it. I cannot tell
8 you what the facts are. You should not disagree with
9 me about what the law is or what the law should be.

10 Your job is to take the law as I explain it to
11 you, apply it to the facts as you find them from the
12 testimony of the witnesses and any other evidence
13 that's introduced during the course of the trial and
14 after doing that you will render a verdict, a true
15 and just verdict under the solemn oath that you just
16 took as jurors.

17 And until I advise you to begin your
18 deliberations please do not discuss this case with
19 anyone, including your fellow jurors, friends, family
20 members or anyone involved in the case. And only
21 after the case is submitted to you should you discuss
22 it in the jury room with your fellow jurors.

23 It's important that you keep an open mind and
24 not decide any issue in this case until all the
25 evidence has been presented, the parties have made

1 their closing arguments and I have instructed you on
2 law as applies to this case.

3 It will be your solemn responsibility to
4 determine the guilt or innocence of the defendant.
5 Your verdict must be based solely on the evidence as
6 it is presented in this trial and the law as I
7 explain it to you at the close of the trial.

8 Now, in just a moment the solicitor will make
9 what's called an opening statement in which the
10 solicitor will explain to you the issues in the case,
11 or at least what the solicitor thinks the issues are.
12 The attorney for the defendant may make an opening
13 statement also. I want to remind you that what the
14 attorneys tell you in their opening statements is not
15 evidence. It's merely their interpretation of what
16 the evidence will show or what they believe or their
17 contention as to what the issues are in the case.

18 The evidence will be presented to you by sworn
19 witnesses from this witness stand and any exhibits
20 that may be introduced during the course of the
21 trial.

22 Now, from time to time one of the lawyers may
23 say something like, Your Honor, I believe we have a
24 question of law to discuss; or, may we approach the
25 bench. Or I myself might find it necessary, as I did

1 this just a minute ago, to excuse from you the
2 courtroom for a short period of time so the attorneys
3 and I can discuss a matter of law.

4 Now, the reason for this is you are the judges
5 of the facts. Sometimes when I am discussing matters
6 of law with the attorneys it may be necessary for me
7 to make some comment about the facts in connection
8 with a ruling, whether a law applies or doesn't apply
9 in this case.

10 I am not supposed to tell you what I think the
11 facts are, so the process is to excuse you from the
12 courtroom while these discussions take place so that
13 in no way will you be influenced by anything that I
14 might say or do with regard to the facts.

15 Sometimes you will hear the attorneys object to
16 various testimony in the case or the introduction of
17 evidence. They are doing this because we have what
18 are known as rules of evidence that govern the
19 evidence that can be presented in court and they are
20 designed to ensure that the evidence is as credible
21 and truthful; and if they object, they're not trying
22 to keep anything from you. They are merely following
23 the rules that they understand and they know, and it
24 will be my responsibly to rule on those objections as
25 to whether some evidence or testimony is admissible

1 or not admissible.

2 Now, in determining what the true facts are, you
3 must decide in this case whether or not the testimony
4 of any of the witnesses or any witness is believable.
5 It will be my responsibility to rule as a matter of
6 law whether the testimony is admissible under the
7 rule of evidence. But once the testimony is
8 admitted, whether you believe it is solely up to you
9 to determine.

10 In deciding whether to believe a witness you
11 have the right to consider the interest of any
12 witness, the bias of any witness or the prejudice of
13 any witness and the opportunity for the witness to
14 have seen and heard the things, the matters about
15 which the witness may testify. And you also can
16 consider the way the witness acts on the witness
17 stand.

18 You have a right to consider anything that's in
19 this record that will help you evaluate the testimony
20 of these witnesses. That means it's your duty to pay
21 close attention to the witnesses, observe the
22 witnesses, pay close attention to the attorneys. Try
23 not to let your thoughts wander but give strict
24 attention to the testimony in the case so that at the
25 end of the testimony after the arguments of counsel

1 and my charge to you on law in the state as it
2 applies to this case, you will then be in a position
3 to determine what the true facts are and apply the
4 law to those facts and thus render a true and just
5 verdict.

6 As I indicated to you earlier, it will be your
7 duty, Mr. Foreperson, to preside in the jury room to
8 be the jury's spokesperson here in court. It will be
9 also be your duty to write the verdict, but I'll give
10 you further instructions about that at the end of
11 case.

12 Now, the bailiff has just brought into the
13 courtroom pencils and pads. I'm going to ask him to
14 distribute them to you at this time because of the
15 complexity of the number of indictments in this case
16 so that you may be able to make notes for yourself
17 during the course of the trial.

18 And let me caution you one thing. You certainly
19 can make notes throughout the course of the trial.
20 They'll be left here overnight. And you can use them
21 for your own purposes, your own memory purposes.
22 They're not to be used to try to convince somebody
23 else of something at the time of deliberation. They
24 are only for your benefit.

25 But as I say, there are numerous indictments in

1 this case. There may be numerous facts. You heard
2 me read out a list of numerous witnesses. And just
3 to keep everything straight, it might be helpful.
4 You don't have to take notes. It's up to you whether
5 you wish to take notes or not. So, Mr. Hollis, if
6 you'll distribute those at this time and following
7 which counsel will begin with their closing
8 arguments. It's probably a good idea to go ahead and
9 put your number on them so that in the morning you'll
10 know which one is yours.

11 (Pause)

12 **THE COURT:** All right. All right, counsel. You
13 may begin with your opening argument. Opening
14 remarks. Not argument.

15 **MR. GOLDBERG:** May it please the Court, Your
16 Honor. Good morning. When I was in the fourth
17 grade, the class that I was in took a very special
18 trip. They planned it for weeks, months, to go down
19 to Cape Canaveral, Florida, go visit NASA, do a
20 little mini-space camp-in for a couple of days.
21 Everybody was fired up about it. There was about 40
22 of us that went.

23 And when we got down there they put us up in
24 hotel rooms, four to a room, and I was in there with
25 three of my best buddies. And he were excited. We

1 were having a good time, went through a couple of
2 days of training and classes at NASA. The second
3 night we were there, we decided to let off a little
4 steam after we had done our assignments for the
5 night. We ordered some pizza, drank some Cokes. And
6 one of my buddies breaks out a bag of, I guess you
7 would call them poppers or snappers. They look kind
8 of like this. You can get them at just about any
9 little store in the mall, Spencer's or Cromer's,
10 something like that. And when you throw them down on
11 the ground or on the wall, they just have a little,
12 tiny, little noise maker. Anybody who has ever had a
13 kid has seen these things.

14 So one of my buddies breaks them out, breaks out
15 a bag of them. For whatever reason, fourth graders
16 that we are, we decided to throw them around the
17 room, at each other and on the floor and walls. And
18 I participated in it. I saw him break out the bag.
19 I was excited. I threw a few of them down on the
20 ground. But the other fellows got a little out of
21 control. They started throwing them on the wall.

22 This led to a couple of guys even going into the
23 closet and actually taking the metal bar that you put
24 hangers on off of the wall and banging the roof above
25 us because they thought there were girls upstairs.

1 They wanted to get their attention.

2 I didn't participate in that. About the only
3 thing I did was throw a couple of these things down
4 on the ground. Well, we didn't think anything of it.
5 But come the next day was supposed to be the
6 highlight of the trip, at least as far as us fourth
7 graders go. We were all supposed to go to the Ron
8 Jon Surf Shop. Everyone couldn't wait for Ron Jon's
9 Surf Shop. Nobody cared about the NASA. They wanted
10 to go to the surf shop, buy some t-shirts, some
11 posters, whatever.

12 Well, as we're on the bus in the parking lot to
13 the Ron Jon Surf Shop, the four of us are held back
14 and confronted about the mess that was found in our
15 room. And we were pulled off the bus one-by-one to
16 talk to the teacher. And when the teacher pulled me
17 off the bus, she said, "Tell me what you did." And I
18 told her. I said, "I think, you know, I threw a
19 couple of those little poppers down on the carpet.
20 That's all I did. I didn't do anything else. I
21 didn't have anything to do with banging on the walls
22 or the ceiling or even throwing them at the walls.
23 All I did was throw a couple of them."

24 And I'll never forget how she explained to me
25 that because I was there and because I knew what was

1 going on and because I was a part of it, because I
2 participated, even though I wasn't the one that
3 caused the most damage, I was just as responsible for
4 what happened in that room as the other three.

5 And as a result, all four of us had to sit on
6 the bus and watch as all our friends came back on
7 giddy as could be with their shirts and their
8 posters. And I'm telling you this some 20 something
9 years later because it's really not that different
10 from what happened in this case. The underlying
11 theory is the same.

12 You are going to hear from the defendant,
13 Octavia Middleton, himself. His words. He gave a
14 written confession, a written statement as to what
15 happened in the apartment on Faraway Drive that
16 night, August the 8th, 2005.

17 And he is going to tell you that on that night
18 he and another man went there with the intention of
19 committing an armed robbery, a lick as they call it.
20 That was their plan. They knew that one of the
21 apartments there had poker machines that were run in
22 the room, in the bedrooms of the apartment. And they
23 were going to go there and they were going to get the
24 money that was in the house. That was their plan.

25 The similarity comes in is that Mr. Middleton is

1 going to go on to say in that statement, he is going
2 to minimize his involvement. He is going to tell
3 you, yeah, I went in there with him, we were going to
4 rob the place, but he is going to deny that he was
5 the primary aggressor. He is going to deny that he
6 was responsible for all the beatings that took place
7 inside. He is going to deny that he was responsible
8 for kicking in the doors to the two apartments. And
9 he is going to deny that he is the one that pulled
10 the trigger on the shotgun that killed James Greene.

11 Now, just as I told that teacher, yeah, I
12 participated, I threw those poppers down on the
13 ground", he is going to tell you, I participated. I
14 went there to do a robbery. And just as I said that
15 I didn't cause the main damage in the room, he is
16 going to tell you, well, I didn't kill that man.

17 Under the theory of the hand of one is the hand
18 of all, it's a legal principle in this state that
19 Judge Cooper is going to charge you with at the end
20 of this trial, the hand of one is the hand of all,
21 Mr. Middleton is just as responsible as the other
22 people involved in the incident, just as I was just
23 as responsible as the other three people in that
24 room.

25 A more specific version of this as it pertains

1 to the murder is the felony murder rule. And Judge
2 Cooper is going to explain that to you as well. And
3 that states that if two people are combining together
4 to commit some sort of an unlawful act, like a
5 robbery, and during the course of that act a homicide
6 or a murder is committed, then all the participants
7 in the underlying act, all the participants of the
8 robbery are equally guilty for the killing of the
9 person, regardless of whether they actually pulled
10 the trigger. And that is the law in this state, and
11 Judge Cooper is going to tell you that.

12 The broader version of that is the hand of one
13 is the hand of all theory. And that states that if
14 you join with another person for an illegal purpose,
15 whatever it may be, we'll call it a robbery, we'll
16 say if you join with another person to commit a
17 robbery and during the course of that robbery other
18 crimes take place, such as an assault, a beating, a
19 burglary, both people are responsible for each
20 others' actions that are incidental to the original
21 offense.

22 So if you come together to commit a robbery and
23 during the course of that the other person beats
24 somebody up, you are equally responsible for that
25 beating regardless of whether you ever threw a punch.

1 If they act together and they assist each other, then
2 the hand of one is the hand of all. And that's the
3 law in this state.

4 So just as my actual involvement in that hotel
5 room was minimal compared to the others; say, even if
6 you assume or agree that Mr. Middleton's actions, if
7 you believe him, that he didn't pull the trigger, it
8 doesn't matter. It doesn't matter. Under the law of
9 this state he is equally responsible whether or not
10 he pulled the trigger. He is equally responsible
11 whether or not he actually took the chair and beat
12 Walter Huggins and it with beat Eliana Garcia with it
13 or assaulted James Graves.

14 He is equally responsible whether or not he
15 actually stuck the gun in the face of Anita Thompson,
16 Walter Huggins, Randy Wigfall, Jerry Gordon, James
17 Greene. It doesn't matter if he actually did it, if
18 he actually committed the act. The hand of one is
19 the hand of all.

20 Now, as Judge Cooper told you, my name is Daniel
21 Goldberg. I'm an assistant solicitor in the Fifth
22 Circuit Solicitor's Office which prosecutes crimes
23 that take place in Richland and Kershaw counties.
24 Along with Luck Campbell, my co-counsel, it is our
25 job to prosecute crimes that take place in Richland

1 County.

2 And today, for the next several days, it's going
3 to be our job to prove to you all beyond a reasonable
4 doubt that on August the 8th of 2005, Octavia
5 Middleton committed all of these offenses, two counts
6 of burglary in the first degree, three counts of
7 assault and battery of a high and aggravated nature,
8 one count of assault with intent to kill, five counts
9 of armed robbery and one count of murder for the
10 murder of James Greene.

11 Now, what I want to do over the next few minutes
12 is just give you a little preview of what you're
13 going to hear in this case. I don't want to go into
14 all the details because the details are going to come
15 from the witnesses themselves on this stand. But I
16 want to give you a little bit of an idea of what
17 they're going to tell you so you have an idea of what
18 to look for.

19 You're going to hear from everyone that was in
20 the apartment and that was the victim of a crime.
21 You are going to hear that on August the 8th Octavia
22 Middleton along with another man arrived at the
23 Faraway Drive apartments, The Reserves I believe is
24 the name of the apartment complex. They were armed,
25 they were in a stolen green truck, and they went

1 there to commit a robbery. They knew that one of the
2 apartments there was a gambling house, for lack of a
3 better term. They had illegal poker machines in the
4 back room. Okay.

5 And they knew that it existed because at least
6 one of them had been there before, maybe even played
7 the machines. And they knew that there was money
8 there and they were going to get it. And the
9 testimony is going to show that when they arrived
10 they went up the stairs, they encountered a fellow
11 named Karl Jones who actually lived across the hall,
12 and they demanded to know where the gambling house
13 was.

14 They pointed the gun at him and they said, where
15 is the house? He said, it's right there. They made
16 him knock on the door. When he knocks on the door,
17 inside of the apartment are four guys that are there
18 to play a game of pinochle. I don't know if you're
19 familiar with pinochle. It's sort of a card game.
20 They were going to play pinochle and watch Monday
21 Night Football.

22 One of the four actually ran the gambling house,
23 collected the money. So there were some few people
24 back in the rooms playing the machines, playing video
25 poker, while these four were going to be in the front

1 and play pinochle and watch Monday Night Football,
2 including Randy Wigfall who ran the place.

3 Well, about 8, 8:30 that night they get a knock
4 on the door. Randy Wigfall goes to open the door and
5 he sees Karl Jones whom he knows from being in the
6 neighborhood. And he thought he was there to see
7 another one of the people there, Mr. Huggins, Walter
8 Huggins. So he walks away. Huggins goes to the
9 door. And when he gets there, the door is thrown
10 open and two men come in the door with a giant black
11 shotgun screaming, demanding orders.

12 Now, you've got to remember something when
13 you're listening to this testimony. There is at
14 least five people that were in there that are going
15 to talk to you about what happened. And when you're
16 listening to what they have to say about who the
17 people were that came in, who the gunman was, what
18 they were doing, none of them are going to tell you
19 the exact same story.

20 They're all going to be a little bit different.
21 They're going to have different recollections of who
22 was standing there, who was doing what, even who was
23 wearing what, which one was the gunman, the taller
24 one, the shorter one, which one had the masks. They
25 are all going to tell you something a little bit

1 different.

2 What you have to keep in mind is that before
3 that door was thrown open this was a relatively
4 peaceful environment. Okay. There was about to be a
5 football game on. It was early in the evening. They
6 were going to play cards. There were some people
7 quietly the machines in the back. But when the door
8 came open, chaos ensued. Okay. You've got two men
9 coming in and screaming: Get on the floor, give me
10 your damn money. Where is Randy? Where is Ojetta?
11 Chaos. They were ambushed.

12 So you're going to have to keep that in mind
13 when you're trying to reconcile the fact that their
14 descriptions are all a little bit different.
15 Everybody is in different places on the floor,
16 different places in the apartment. There is blood.
17 There is gunshots. There is people being beaten with
18 chairs. Absolute chaos. Just remember that.
19 Remember that when you are trying to figure out why
20 these stories are a little bit different.

21 Each one of is them going to come up and tell
22 you what they remember. They're going to tell you
23 essentially that these two men were in there, under
24 our theory, passing the gun back and forth among each
25 other, as both descriptions of men were described as

1 being the gunman.

2 One man had a gun to Mr. Greene, James Greene.
3 He was seated on the far right side of the apartment.
4 They went straight to him because the information
5 they had was that the operator of the gambling house
6 was going to be seated over on the right side on the
7 couch.

8 Mr. Greene in the wrong place at that time wrong
9 time. He was just there to play pinochle. They go
10 straight to him demanding money. He doesn't have it.
11 Everyone else is saying he doesn't have money.
12 People in the process, Randy -- excuse me. Walter
13 Huggins is being hit with a chair. Eliana Garcia is
14 pulled in from across the hall. She lives across the
15 hall. She is dragged in there by one of the two men,
16 thrown to the ground. She is hit with a chair.

17 Eventually Mr. Greene back over here on the
18 right still hasn't produced any money. The shotgun
19 is put up to his chest. He is beaten in the head
20 with the butt of the gun numerous times. Ultimately
21 the trigger is pulled and he's shot at point blank
22 range. I believe the gun was touching him.

23 At this point someone yells out from across the
24 room, I believe Walter Huggins. They turn. They
25 fire at him. Miss him. He has already been hit in

1 the head several times with the gun and chairs. One
2 of the two men goes back throughout the back of the
3 apartment in the bedrooms where the machines are,
4 confronts some of the players of the machines,
5 demands money from them.

6 Two individuals, Jerry Gordon and Randy Wigfall,
7 are in the bathroom, one of whom Gordon was led there
8 by a gunman, made to strip down, give up his money.
9 Ultimately, Ms. Garcia, Eliana Garcia, is able to
10 flee the scene, get away after she has been made to
11 strip naked. She runs back across the hall into her
12 apartment, closes the door.

13 She is followed by one of the men. The door is
14 kicked open. She hides in a closet of one of her
15 roommates, Walter Graves, at which point they come
16 looking for her. They encounter Mr. Graves. They
17 demand money from him, ask him where she is. He
18 doesn't say anything. They beat him.

19 Ultimately they leave. They flee the scene.
20 They try to leave in this green truck they arrived
21 in. It's stuck on the curb. And they have to flee
22 and go their separate ways.

23 A third man that you're going to hear from,
24 Harry Dukes, a third man charged with these offenses,
25 was there and outside. He never went into the

1 apartment, but he was there with them. He rode in
2 the truck with them, and he knew what they were going
3 to do. You'll hear from him.

4 You will also hear about the investigation from
5 law enforcement, how it proceeded, how they tracked
6 down the two defendants, how they tracked down the
7 gun. It was later located in an apartment that one
8 of the defendants had been in numerous times. You're
9 going to hear all the about the investigation. I'm
10 going to leave most of the details of that to the
11 witnesses.

12 But you're also, as I told you, going to hear
13 from Mr. Middleton himself in the statement that he
14 gave where he admitted that they went there to rob
15 the place.

16 Now, I don't want to get too far into it.
17 Again, I want to let them tell you as they remember
18 it. But you heard me mention a minute ago that the
19 State has to prove this case beyond a reasonable
20 doubt. I want to spend just a second talking about
21 what that means.

22 In every criminal case the state of South
23 Carolina holds the burden of proof. It requires us
24 to prove our case for each charge beyond a reasonable
25 doubt. So the question is, what is a reasonable

1 doubt? Some would call it a doubt that causes a
2 reasonable person to hesitate to act. Another way I
3 like to look at it is, a person might doubt that the
4 sun will rise in the morning, but that would be an
5 unreasonable doubt. Here the burden is to prove our
6 case beyond a reasonable doubt, not any doubt or all
7 doubt, just a reasonable doubt.

8 And I submit to you that in this case the State
9 welcomes that burden, for despite the fact that we
10 only have to prove this beyond a reasonable doubt,
11 once you've heard all the testimony in this case,
12 seen the evidence, there is not going to be any doubt
13 in your mind. There will be no doubt in your mind
14 that Octavia Middleton committed these offenses.

15 I want to take a second to discuss the law in
16 this case. Judge Cooper is going to go into that a
17 little further at the close of the trial. He's going
18 to charge you on the law and the elements. I already
19 discussed the hand of one, hand of all and the felony
20 murder charge.

21 If they act together and they assist one
22 another, then each one is responsible for the other
23 one's acts, regardless of whether they threw the
24 punch, regardless of whether they actually pulled the
25 trigger. If one of them did it, then the other did

1 it.

2 And that pertains to each one of the charges. I
3 told you about the felony murder charge. As to that
4 charge, if they go in there and their goal is to rob
5 the place, which Middleton will admit to you through
6 his statement, and during the course of that Mr.
7 Greene is killed in the course of committing that
8 robbery, it doesn't matter who pulled the trigger.
9 Each of them are equally responsible.

10 The hand of one, hand of all is a little bit
11 broader. You can apply it to the other offenses in
12 this case. As to the armed robbery, you're going to
13 hear the elements of that are that Mr. Middleton took
14 goods or money of other people without their consent
15 with the intent to keep it from them by means of
16 force or intimidation, like holding a shotgun, or his
17 co-defendant holding a shotgun, and that he was armed
18 with a deadly weapon in the process. That's an armed
19 robbery.

20 You're going to hear about assault and battery
21 of a high and aggravated nature. It's an unlawful
22 act of violent injury, such as beating someone with a
23 chair, accompanied by circumstances of aggravation.

24 A circumstance of aggravation could be the use
25 of a weapon while beating someone, like beating them

1 with the butt of a gun. It could be causing serious
2 injury, splitting someone's head open, Walter Huggins
3 had happen to him. Or even a difference in sexes.
4 Simply assaulting Eliana Garcia and hitting her with
5 fists or chairs rises to the level of an assault and
6 battery of a high and aggravated nature.

7 You're also going to hear about burglary in the
8 first degree. This would apply to both apartments.
9 Entering those without consent of the owner with the
10 intent to commit a crime therein. And, indeed, it
11 happened while it was dark outside or while the
12 parties were armed with a weapon, which in this case
13 we submit is a shotgun.

14 And then there is the assault with intent to
15 kill which pertains to the charge against Mr.
16 Middleton relating to Walter Huggins. When he turned
17 and fired the weapon at him, that is an assault with
18 intent to kill. He assaulted him with the intent to
19 kill him. He fired the weapon at him with the intent
20 to kill him, with malice aforethought, with evil or
21 hatred in his heart.

22 And that can also apply to the murder charge.
23 The unlawful killing of another with malice
24 aforethought. Evil, ill will in his heart.

25 It's just a brief summary of the law as Judge

1 Cooper is going to give it to you, but you needed to
2 be aware of it as you prepare to hear all this
3 testimony so you can know what to look for.

4 Your main job throughout the course of this
5 trial is going to be to listen to the testimony, look
6 at the evidence and judge the credibility of these
7 witnesses or the believability of witnesses. Is what
8 this person is telling me believable? It's the same
9 thing.

10 And I submit that this is something you do every
11 day of your lives. You may not realize it, but if
12 you're walking down the street or you're at the water
13 cooler, somewhere inside of you you're trying to
14 decide is this person that I am talking to
15 believable? Do I believe what they're saying?

16 This is no different. It's just they're going
17 to be seated right here on the witness stand. But I
18 caution you, when you're doing so, in regards to the
19 people that were in the apartment, remember what I
20 told you. Chaos. They were ambushed. A lot of
21 things going on in that apartment. There's going to
22 be a lot of different things remembered in different
23 ways.

24 It's just like if you're standing on the street
25 and you see a car accident from one side of the

1 street and someone else sees it from the other side
2 of the street. Chances are you're going to see it
3 two different ways. You going to see little things a
4 little bit different. Keep that in mind.

5 I think I've gone on long enough at this point.
6 But that's just a preview of what you're going to see
7 in this case. I want to thank you for your service.
8 I want to remind you also of the oath that you all
9 took just a moment ago when you were sworn in. I'm
10 paraphrasing a little bit, but you all swore that you
11 would well and truly try to deliberate a true and
12 just verdict. A true and just verdict. And that is
13 all we are asking for, ladies and gentlemen.

14 At the end of this case, after all the testimony
15 has been presented, all the evidence, I want you to
16 come back with a true and just verdict. And
17 "verdict" comes from Latin. It means to speak the
18 truth. Speak the truth. And that's all we want.
19 That is all we are asking for.

20 And I am confident that once you have heard all
21 of the evidence in this case you will speak the
22 truth. And that truth is going to shout out loud and
23 clear: Octavia Middleton, guilty of assault and
24 battery of a high and aggravated nature of three
25 different people, assault with intent to kill,

1 burglary in the first degree of two different
2 dwellings, armed robbery of five different people,
3 and murder of 73-year-old James Greene. Thank you.

4 **THE COURT:** Mr. Hisker.

5 **MR. HISKER:** May it please the Court.

6 **THE COURT:** Yes, sir.

7 **MR. HISKER:** Solicitors. Good afternoon, ladies
8 and gentlemen. This is a tragic case. It's a very
9 tragic case. I don't envy your position here. My
10 name is Steve Hisker. I'm a defense attorney here in
11 Columbia. I practice through most of the state. I
12 represent citizens accused of crimes. Today I
13 represent Octavia Middleton who is charged with these
14 very serious crimes. But he is a citizen. He is one
15 of us.

16 On behalf of Octavia Middleton, I thank you for
17 your service. It's not going to be an easy task for
18 you. You are judging a man's life in very serious
19 circumstances. Ladies and gentlemen, he is a
20 citizen. And our forefathers when they created this
21 jury system felt that the only way you could judge a
22 citizen was for other citizens, the 14 of you, to
23 view all of the evidence and to make a determination
24 of guilt beyond a reasonable doubt.

25 And Mr. Goldberg told you about the reasonable

1 doubt standard. I agree with his position. There
2 are other standards that you may have heard of in
3 your experience in life. There is also the
4 preponderance of the evidence standard. We've all
5 seen the scales of justice. The preponderance of the
6 evidence standard is just tipping that scale in the
7 favor of one side. It's who presented the most
8 evidence. That's not the standard in a criminal
9 case.

10 In a criminal case we have the standard beyond a
11 reasonable doubt. It is the highest standard in the
12 law. If it's not just proving all doubt, it's
13 proving any reasonable doubt. If you can fathom a
14 reasonable doubt, a reasonable explanation for these
15 charges, then you have to return a guilty -- a not
16 guilty verdict. That is your oath. Any reasonable
17 doubt.

18 I told you about preponderance of the evidence,
19 reasonable doubt. There's also a standard in the
20 middle. It's called clear and convincing. That
21 sounds like a pretty high burden. Reasonable doubt
22 is even beyond that. It has to be far more than
23 clear and convincing evidence.

24 I'm not going to go into all the facts of this
25 case. Mr. Goldberg told you some of them. I want

1 you to remember some of the things he told you you
2 would hear. Because you will hear things again. And
3 I want you to compare what the State alleges you will
4 hear and find as to what you actually find on the
5 witness stand. Because, ladies and gentlemen, things
6 often are not what they appear.

7 Your job as jurors are to look at all the
8 evidence in the case and all the details. Ask
9 yourself at the end of this case, does everything add
10 up? Are things the way they seem? Because many
11 times we know in life they are not. Things often are
12 not the way they appear.

13 It is my belief at the end of this case there
14 will be sufficient doubts that you will see to return
15 a verdict of not guilty as to all counts. Thank you.

16 **THE COURT:** All right, sir. Solicitor, call
17 your first witness.

18 **MS. CAMPBELL:** The State calls Deputy Payne.

19 **LARRY PAYNE,** after being duly sworn, testifies
20 as follows:

21 **THE CLERK:** Thank you. Please have seat in the
22 witness stand and state your full name for the
23 record.

24 **WITNESS:** Larry Payne.

25 DIRECT EXAMINATION

Larry Payne - Direct by Ms. Campbell

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- 1 **BY MS. CAMPBELL**
- 2 **Q** Sir, where are you employed?
- 3 **A** The Richland County Sheriff's Department.
- 4 **Q** And what do you do there?
- 5 **A** I am a corporal on the road for region two.
- 6 **Q** And as a corporal on the road for region two, tell
- 7 this jury what your duties include?
- 8 **A** Just normal patrol duties. I'm a supervisor for the
- 9 guys that all work on our shift. And we patrol the
- 10 Dentsville area in the northeast part of town.
- 11 **Q** So if I have a problem and I call 911, would you be
- 12 perhaps one of those people that would respond to the
- 13 scene?
- 14 **A** Yes, ma'am.
- 15 **Q** To check everything out? Region two I believe is
- 16 where you work?
- 17 **A** Yes, ma'am.
- 18 **Q** What area of town is that, sir?
- 19 **A** It goes from the City of Columbia out to Clemson
- 20 Road, from Ft. Jackson over to Farrow Road.
- 21 **Q** Are you familiar with a road called Faraway Drive?
- 22 **A** I am.
- 23 **Q** And is that included in region two?
- 24 **A** Yes, ma'am.
- 25 **Q** And are you familiar with an apartment complex called

1 The Reserves?

2 **A** Yes, ma'am.

3 **Q** And is that located on Faraway Drive?

4 **A** It is.

5 **Q** And that apartment complex, is it here in Richland
6 County?

7 **A** Yes, ma'am, it is.

8 **Q** I want to turn your attention back to August the 8th
9 of 2005, a little over two years ago. Did you have
10 an occasion to respond to The Reserves on August the
11 8th?

12 **A** Yes, ma'am, I did.

13 **Q** And what time did you actually receive a call to go
14 to The Reserves?

15 **A** It was approximately at 8:40.

16 **Q** 8:40?

17 **A** Yes, ma'am.

18 **Q** And would that be in the morning or in the evening?

19 **A** The evening, p.m.

20 **Q** And what kind of call were you responding to at The
21 Reserves that day?

22 **A** I believe we were actually dispatched to a shooting
23 or shots fired call. I believe.

24 **Q** Shots fired?

25 **A** Yes, ma'am.

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1 Q And when you say the victim, who would that be? Mr.
2 Greene?

3 A Yes, ma'am. Mr. Greene.

4 Q And you said you observed him laying on the floor.
5 What was his condition when you got there?

6 A He -- at that point he was already deceased.

7 Q And could you tell whether or not he had sustained
8 any injuries to his body?

9 A Yes, ma'am. He had a large gunshot wound to the
10 chest.

11 Q You said that you noticed him on the floor. And I'll
12 get back to that in a minute. What else did you
13 observe there in the -- the room that you go into
14 when you enter that apartment, what area is that?

15 A When you first walk in, it's kind of like the dining
16 area and the kitchen to the left, and then the living
17 room is off to the right.

18 Q And where was Mr. Green's body when you got there?

19 A He was laying on the ground off to the right near the
20 television and a couch I believe.

21 Q Did you make any other observations there in the area
22 there where you entered?

23 A Yes. There was a lot of blood all over the
24 apartment, on the walls, chairs knocked over.
25 Everything was in disarray.

1 Q Do you know approximately how long it took you to get
2 there that day?

3 A By the report, it was eight minutes.

4 Q And which apartment were you going to to check out
5 the shots fired?

6 A It was [REDACTED] [REDACTED]

7 Q And in this apartment complex, how is it set up? Are
8 there apartments on several levels, or how does that
9 work?

10 A Yeah. Each one -- well, some of them, they're
11 actually -- it's multilevel. It's kind of strange.
12 But they go around. You they start off when you come
13 in, A, B, C, D, E and go all the way back around.
14 But they're actually multilevel. Some of them is --
15 they're really three stories, but they're set up on
16 different levels. I know that sounds kind of
17 strange.

18 Q Did any officers respond with you that night?

19 A Deputy Baldwin.

20 Q Once you got to the scene, tell the jury what you
21 found?

22 A When we arrived to the scene, we went to the actual
23 house where we were dispatched to. The door was
24 somewhat propped open. As we made entry we served
25 the victim laying on the floor.

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- 1 Q What was your purpose when you initially entered the
2 apartment? What are you trying to do when you
3 respond to, say, a shots fired call?
- 4 A One, to see if there was any more suspects inside the
5 house, any suspects in the house and any other
6 victims that may have been present.
- 7 Q And to do that, you actually search the entire
8 apartment initially?
- 9 A Yes, ma'am.
- 10 Q And did you do that in this case?
- 11 A Yes, ma'am.
- 12 Q And did you encounter any of the victims inside the
13 apartment that day?
- 14 A Any other victims inside that apartment?
- 15 Q Besides Mr. Greene.
- 16 A No, ma'am.
- 17 Q Did you make any observations of certain machines in
18 the back rooms?
- 19 A Yes, ma'am.
- 20 Q And what kind of machines were those?
- 21 A They were video poker machines.
- 22 Q Once you had searched -- in your search of the
23 apartment, [REDACTED], did you find any suspects still at
24 the scene?
- 25 A No, ma'am.

- 1 Q Once you had searched the apartment, ■■■, did you
2 extend your search to another apartment?
- 3 A Yes, ma'am.
- 4 Q How did that happen?
- 5 A Either dispatch gave it to us or -- and I believe the
6 lady was also across the hall. I just noticed some
7 situation had occurred there, too.
- 8 Q And did you make any observations about that
9 apartment?
- 10 A Yes. I believe her door actually had been kicked in,
11 and she was hysterical trying to explain to us what
12 had happened.
- 13 Q Were you having a hard time getting information from
14 her?
- 15 A Yes, ma'am.
- 16 Q And why was that?
- 17 A One, she was just very upset about it and disturbed
18 about what the whole situation was. She had just
19 seen somebody get shot, you know, just been shot. So
20 of course she is distraught over what had occurred.
- 21 Q And do you know whether or not she had sustained any
22 injuries herself?
- 23 A I believe she had been struck as well. I don't
24 recall where.
- 25 Q As one of the first officers on the scene, does your

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- 1 duty include trying to develop any suspect
2 information?
- 3 A Yes, ma'am.
- 4 Q And what was in this case the most information you
5 were able to get there initially at the scene?
- 6 A That it was two young black males we put out over the
7 radio that had robbed these individuals and shot the
8 victim.
- 9 Q And were you able to get that information out over
10 the radio?
- 11 A Yes, ma'am.
- 12 Q Once you have searched the scene -- and when you went
13 in [REDACTED], just for the record, too, did you find any of
14 the suspects still in there?
- 15 A No, ma'am.
- 16 Q Did you make contact with any other people there at
17 the scene?
- 18 A I didn't. I believe there was someone else inside
19 the apartment, but I didn't speak to them.
- 20 Q And your purpose as the official officer responding
21 at the scene is to secure the scene?
- 22 A Yes, ma'am.
- 23 Q And did you do that in this case?
- 24 A Yes, ma'am.
- 25 Q Did you make any further calls to get more people out

1 to the scene that day?

2 A Yes, ma'am. We -- I notified our lab, our
3 investigators, other units to try to set up a
4 perimeter in the area and to help crowd control. At
5 this point there was a lot of people outside the
6 apartment.

7 Q You also tried to gather any information from any
8 witnesses that can be passed along to investigators
9 as follow up?

10 A Yes, ma'am.

11 Q And did you do that in this case?

12 A Yes, ma'am.

13 Q Did you take any measures in order to secure the
14 scene itself as far as taking taping it off or
15 anything of that?

16 A We did. We actually used our crime scene tape and we
17 shut off -- when you first come into the left, we
18 shut that whole area off so nobody else could come in
19 there. And on the apartment that's right past this
20 one, we closed off the whole area so nobody could
21 come into the -- we didn't know exactly the full
22 extent of the crime areas at that point, so we just
23 taped off everything.

24 Q So you were able to preserve the crime scene?

25 A Yes, ma'am.

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- 1 Q And were you there when EMS actually responded to the
2 scene?
- 3 A I was.
- 4 Q Were they able to resuscitate Mr. Greene?
- 5 A No, ma'am.
- 6 Q Once you assess things initially and get whatever
7 information out over the radio and everything, you
8 secure the scene and then turn it over to
9 investigators?
- 10 A Yes, ma'am.
- 11 Q Was that done in this case?
- 12 A Yes, ma'am.
- 13 Q I want to show you a series of photographs; but
14 first, before you say anything about what's in them,
15 just see if you recognize those.
- 16 A Yes, ma'am.
- 17 Q And do those fairly and accurately depict at least
18 part of the scene as you found it that night?
- 19 A Yes, ma'am.
- 20 Q I want to also show you two diagrams. Have you had
21 an opportunity to review these?
- 22 A Yes, ma'am.
- 23 Q And do those fairly and accurately depict the area
24 where the apartment is located as well as just the
25 layout of the apartment?

1 **A** They do.

2 **MS. CAMPBELL:** Your Honor, at this time we'd
3 offer these into evidence.

4 (WHEREUPON, State's Exhibit No. 98 is marked for
5 identification.)

6 (WHEREUPON, State's Exhibit No. 99 is marked for
7 identification.)

8 **MS. CAMPBELL:** Your Honor, that would be State's
9 98 and 99.

10 **MR. HISKER:** Judge, I do have a matter.

11 **THE COURT:** Let me see it.

12 **MS. CAMPBELL:** And for the record, State's 6, 7,
13 8, 9, 10, 11, 13 and 14.

14 (Whereupon, a bench conference is had)

15 **MS. CAMPBELL:** Thank you.

16 **THE COURT:** The photographs are admitted over
17 the objection of the defendant.

18 **COURT REPORTER:** What about the diagrams, Your
19 Honor?

20 **THE COURT:** Ma'am?

21 **COURT REPORTER:** I'm not sure about the
22 diagrams.

23 **MS. CAMPBELL:** 98 and 99.

24 **THE COURT:** Diagrams.

25 **MR. HISKER:** I have no objection.

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1 **THE COURT:** No objection.

2 (WHEREUPON, State's Exhibit No. 6 is admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 7 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 8 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 9 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 10 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 11 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 13 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 14 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 98 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 99 is admitted
21 into evidence.)

22 **MS. CAMPBELL:** Your Honor, may the witness step
23 down?

24 **THE COURT:** Yes, ma'am.

25 **MS. CAMPBELL:** Thank you.

1 Q If you'll come over on this side, the court reporter
2 is able to hear you a little bit better. The first
3 thing I want to show you is State's Exhibit No. 98.
4 I believe that's a diagram. What does that depict,
5 sir?

6 A This is the apartment complex, The Reserves.

7 Q Is that an aerial view of that?

8 A Yes, ma'am.

9 Q And can you show the jury how you would have come
10 coming from Faraway Drive and entering and where the
11 actual building where these two apartments were?

12 A Okay. I came in on Faraway Drive here. This is your
13 only entrance into the apartment complex. I came
14 down a little hill and came straight over here, and I
15 believe I parked my patrol vehicle somewhere around
16 here.

17 Q And this building right here, is that the building
18 that had these apartments in it?

19 A Yes, ma'am.

20 Q You mentioned that when you entered the apartment --
21 I show you State's Exhibits No. 99; is that a general
22 layout of the apartments?

23 A Yes, ma'am.

24 Q And when you made entry, you mentioned over in one
25 area that you noticed Mr. Greene. And where was he

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- 1 located approximately?
- 2 A Right here in this general area.
- 3 Q You also said that there were some chairs and things
- 4 that were upended in that area?
- 5 A Yes, ma'am.
- 6 Q And where were those located?
- 7 A There were some folding chairs and a table here. I
- 8 believe there was another chair that was knocked over
- 9 somewhere in this general area here, too.
- 10 Q You also mentioned that there were some poker
- 11 machines located in --
- 12 A Yes, ma'am.
- 13 Q -- the bedrooms? And where were those bedrooms?
- 14 A These right here. They were along the walls inside
- 15 the bedrooms.
- 16 Q And again for the record, when you got there, the
- 17 only person was Mr. Greene who was deceased at that
- 18 point?
- 19 A Yes, ma'am.
- 20 Q Using that to orient people, the first one I want to
- 21 show you is State's Exhibit No. 6. What does that
- 22 area show?
- 23 A That is this area right here when you -- this is the
- 24 front door when you come in from the hallway, and
- 25 that is what you see off to the left over here in the

1 dining area.

2 Q And is that how it appeared when you got there that
3 night?

4 A Yes, ma'am.

5 Q I show you State's Exhibit No. 7. Do you recognize
6 that?

7 A Yes, ma'am.

8 Q And where is that located in the apartment?

9 A That is over here to the right in the living room
10 area.

11 Q And this, what is that right there?

12 A That's the couch.

13 Q I notice there's a blue blanket here?

14 A Yes, ma'am.

15 Q Was that there when you initially got there?

16 A No, ma'am.

17 Q And what is that covering up?

18 A That's covering up the victim.

19 Q And who actually put that on him that night?

20 A I do not recall.

21 Q Did EMS respond?

22 A Yes, ma'am. Them possibly.

23 Q I show you what's been marked as State's Exhibit
24 No. 8. What does that show?

25 A That's a folding chair and a folding table.

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- 1 Q And where was that located in the apartment?
- 2 A In the dining room area.
- 3 Q State's Exhibit No. 11, what does that show?
- 4 A This is this wall right here in the kitchen between
- 5 the kitchen and the dining room area with all the
- 6 blood on it.
- 7 Q And is that how it was, appeared when you got there
- 8 that night?
- 9 A Yes, ma'am.
- 10 Q State's Exhibit No. 9, what does that show? And 10?
- 11 A Again, that's the wall right here between the dining
- 12 room and the kitchen, little counter.
- 13 Q Did you also in State's Exhibit No. 13 -- what items
- 14 are depicted in that?
- 15 A A folding chair, some pillows that were from the
- 16 couch and some clothes.
- 17 Q And those clothes, is that how they appeared when you
- 18 were there that night?
- 19 A Yes, ma'am.
- 20 Q And where was that located inside the apartment if
- 21 you recall?
- 22 A Off to the right in the front of the living room
- 23 area.
- 24 Q And at that point did you know whose clothes those
- 25 were?

1 A No, ma'am.

2 Q What's this little item right there?

3 A It's a crack pipe.

4 Q And that's where it was when you got there that
5 night?

6 A Yes, ma'am.

7 MS. CAMPBELL: Your Honor, permission to
8 publish?

9 THE COURT: Yes, ma'am.

10 Q During the course of your observations there, do you
11 recall seeing a green truck outside the apartment
12 building?

13 A No, ma'am. I don't recall that. I remember some
14 discussion of it, but I don't ever recall seeing it.

15 Q And other investigators responded to the car?

16 A Yes, ma'am.

17 Q And would have processed that?

18 A Yes, ma'am.

19 Q Beg the Court's indulgence. Thank you, sir. Please
20 answer any questions the defense may have.

21 THE COURT: Cross examination.

22 MR. HISKER: I have no questions, Your Honor.

23 THE COURT: All right. You may come down. May
24 this officer be excused? Without objection.

25 MS. CAMPBELL: Thank you.

Larry Payne - Direct by Ms. Campbell

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1 **THE COURT:** Next witness, please.

2 **MR. GOLDBERG:** The State calls Karl Jones.

3 KARL JONES, after being duly sworn, testifies as
4 follows:

5 **THE CLERK:** Thank you. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 **MR. GOLDBERG:** Your Honor, may we approach for a
9 minute?

10 **THE COURT:** Sure.

11 (Whereupon, a bench conference is had)

12 DIRECT EXAMINATION

13 **BY MR. GOLDBERG**

14 **Q** Good afternoon, sir.

15 **A** How you doing, sir? Karl Jones.

16 **Q** Karl Jones. Yes, sir. Mr. Jones, back in August of
17 2005, where were you living at the time?

18 **A** [REDACTED], Apartment [REDACTED].

19 **Q** Okay. I just need you to make sure you speak up so
20 the --

21 **A** Apartment [REDACTED]

22 **Q** Thank you. And the court reporter needs to hear you,
23 too. [REDACTED]

24 **A** Yes, sir.

25 **Q** Where? What apartment complex? Is that The

1 Reserves?

2 A Yes, sir.

3 Q On Faraway Drive?

4 A Yes, sir.

5 Q Okay. Were you living there August the 8th of 2005?

6 A Yes, sir, I was.

7 Q Who else lived in that apartment?

8 A My girl friend, Eliana, and my son, Walter Graves.

9 Q Walter Graves and Eliana?

10 A Yes.

11 Q Is that Eliana Garcia?

12 A Yes.

13 Q And one other person?

14 A My wife.

15 Q Your wife. Okay. Take me back to what you were

16 doing on the night of August the 8th, 2005?

17 A Well, I was downstairs. I was just sitting there

18 talking to my friend, Eliana.

19 Q I'm sorry.

20 A I was downstairs.

21 Q Let me move this down for you.

22 A Okay. I was downstairs just sitting there talking to

23 my friend. All right. We seen two people at the

24 apartment nextdoor at the building nextdoor.

25 Q The building nextdoor?

Karl Jones - Direct by Mr. Goldberg

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1 A Yeah. And we seen them going in there and then
2 coming back out of that and went to what would have
3 been my building. When they went up to my building,
4 I went upstairs. When I went up --

5 Q I'm sorry, sir.

6 A They can't hear me?

7 Q No, I don't think they can. Just make sure you speak
8 loud and clear. Okay?

9 A All right.

10 Q Sorry about that. All right. You were at your
11 apartment downstairs. Is that right?

12 A Yes, sir.

13 Q You were with your friend?

14 A Yeah.

15 Q And you all were just hanging out downstairs?

16 A That's it.

17 Q And what did you see while you were downstairs?

18 A Well, they entered the apartment. They entered the
19 building nextdoor.

20 Q You said "they". Who do you mean? Two guys?

21 A Yeah. Two guys.

22 Q Okay.

23 A So when they came out that building into my building;
24 all right, I went upstairs. When I went upstairs,
25 they confronted me. They said --

1 Q They what?

2 A They confronted me. They asked me, are you sure that

3 that's a gambling house? I said, man, I don't know

4 where no gambling house is at.

5 Q They asked you where the gambling house was?

6 A Yeah. They asked me where the gambling house. I

7 said, man, I ain't know where no gambling house is

8 at, man. And he said, shh, shh. He said, man, show

9 me where the gambling house is at.

10 Q When you did that shh, shh motion, what does that

11 mean?

12 A He cocked the gun.

13 Q What did the gun look like?

14 A A black shotgun.

15 Q A shotgun?

16 A Yeah.

17 Q Okay. And when they said that, what did you do?

18 A I knocked on the door. They made me knock on the

19 door.

20 Q Where was the gambling house?

21 A Nextdoor to mine, across the hall from mine.

22 Q Across the hall?

23 A Yes.

24 Q Is that [REDACTED]?

25 A Yes.

Karl Jones - Direct by Mr. Goldberg

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1 Q Had you ever been over there before?

2 A Only to see someone. Not to gamble.

3 Q Not to gamble?

4 A No.

5 Q Okay. So when they -- when you told them where it

6 was, what did you do?

7 A I led them.

8 Q You led them to the door?

9 A Yeah. When he opened up the door, I left.

10 Q Did you knock on the door?

11 A Yes. I knocked on the door. They put the gun to my

12 head and made me knock on the door. They said, knock

13 on the door.

14 Q I'm sorry. What?

15 A They put the gun to my head and made me knock on the

16 door.

17 Q They put the gun to your head and made you knock on

18 the door. Did they say anything to you?

19 A Well, they said, where is the gambling house? I

20 said, man, I can't knock on these people's door. He

21 said, man, knock on the f'g door.

22 Q Knock on the f'g door?

23 A Yeah, yeah.

24 Q And then once you knocked on the door --

25 A I left.

1 Q -- you left?

2 A Yeah. They barged in.

3 Q Okay. Can you describe what the two guys looked

4 like?

5 A No, I don't.

6 Q Do you remember what their heights were like?

7 A One was tall. One was short. One had like a little

8 beard going down, and one had his face covered.

9 Q One was tall and one was short?

10 A Yeah. One had his face covered.

11 Q Was his whole face covered or part of it?

12 A No. Just a shirt around his mouth.

13 Q A shirt around his mouth?

14 A That's it.

15 Q Facial hair?

16 A Yeah. A little thin around here. (Indicating jaw)

17 Q Who was home at your apartment at the time?

18 A Eliana and Walter Graves.

19 Q Eliana and Walter Graves?

20 A Yeah.

21 Q Did you ever see the two guys again?

22 A No, I didn't.

23 Q Do you remember what their clothing looked like?

24 A Excuse me?

25 Q Do you remember what their clothing looked like?

Karl Jones - Direct by Mr. Goldberg

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1 **A** One had a basketball jersey on I think.

2 **Q** A basketball jersey?

3 **A** Yeah. And I don't remember anything else.

4 **Q** And do you remember what kind of pants they were

5 wearing?

6 **A** Shorts.

7 **Q** One of them had blue jeans on?

8 **A** Yes, sir.

9 **Q** Once you left the area and they went in, where did

10 you go?

11 **A** I went downstairs. I left. Me and my friend ran in

12 the back of the apartment. When we went in the back

13 of the apartment and we was trying to dial 911 to

14 call the police, we heard a gunshot. And when we

15 heard the gunshot, we ran from in the back of the

16 building. We ran from the back of the building.

17 **Q** When you say you went in the apartment with your

18 friend, you mean your apartment?

19 **A** No. We didn't enter my apartment. I ran downstairs.

20 When I ran downstairs, I asked a friend to call 911.

21 We were sitting out there and he had a phone. I

22 said, man, could you call 911? He was trying to call

23 911. So when we called 911, we heard a gunshot.

24 When we heard the gunshot, we ran from the back of

25 the building. And then we went to the back of the

1 building.

2 Q Beg the Court's indulgence. Mr. Jones, I don't mean
3 to embarrass you. But were you convicted of a
4 criminal domestic violence about a year ago?

5 A Yes. Yes, I was. Yes.

6 Q Were you also convicted of a burglary charge a couple
7 of years back in New Jersey?

8 A Yes, I was.

9 Q Thank you, sir. That's all I have.

10 THE COURT: Mr. Hisker.

11 MR. HISKER: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. HISKER

14 Q Hello, Mr. Jones.

15 A Hello.

16 Q Was it clear to you that these two fellows did not
17 know where the gambling house was?

18 A No. They acted like they didn't know.

19 Q They didn't know?

20 A At all.

21 Q They needed your help to find it?

22 A Right.

23 Q That's all I have. Thank you.

24 A You're welcome.

25 THE COURT: Redirect?

Karl Jones - Cross by Mr. Hisker

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1 MR. GOLDBERG: No, sir.

2 THE COURT: You may come down, sir. Thank you
3 very much.

4 WITNESS: You're welcome.

5 THE COURT: Witness free to be excused? Without
6 objection. Next witness.

7 MR. GOLDBERG: The State calls Walter Huggins.

8 WALTER HUGGINS, after being duly sworn,
9 testifies as follows:

10 THE CLERK: Thank you. Please have a seat in
11 the witness stand and state your full name for the
12 record.

13 WITNESS: Walter Huggins.

14 DIRECT EXAMINATION

15 BY MR. GOLDBERG

16 Q Mr. Huggins, how you doing?

17 A I'm all right, sir.

18 Q Sir, if you wouldn't mind giving this jury a little
19 bit of background on you; who you are, where you're
20 from, what you do?

21 A Oh, I'm Walter Huggins. I'm from Charleston. I live
22 in Columbia here. And I'm a litter control officer
23 for Richland County.

24 Q A what control?

25 A Litter control officer.

1 Q Litter. Okay. And how long have you been in
2 Columbia, sir?

3 A Since '91.

4 Q Okay.

5 A Retired from the military.

6 Q What did you do in the military?

7 A I was infantryman.

8 Q And have you always been in this line of work since
9 you've been in Columbia?

10 A No. I was a barber once, and I ran a restaurant
11 once.

12 Q Okay. And tell us how you got to know the other
13 fellows involved in this incident, Mr. Gordon and Mr.
14 Greene and Mr. Wigfall?

15 A Well, Mr. Gordon was in the military. I met him in
16 the military. Mr. Wigfall I met at a body shop. He
17 was a repairman. And Mr. Greene, when I opened my
18 barber shop, I met him in early, I think it's
19 somewhere around 1992, something like that.

20 Q What kind of relationship did you have with these
21 guys? I mean, did you see them often back in August
22 of '05?

23 A Yeah. Well, they was my best friends, those guys.
24 Mr. Greene and I, we locked onto each other and we
25 was in the Masonic business together. And we just

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- 1 become best of friends. He was my best friend. .
- 2 Q And back on this day, August the 8th, were you
- 3 planning on meeting up with them that night?
- 4 A Yeah. As a matter of fact, on Sunday night we played
- 5 pinocle until about 12:00.
- 6 Q Those who don't know, can you tell them what pinocle
- 7 is?
- 8 A Pinocle is a game of prestige. You get to brag about
- 9 who is the champ. And it's a game that you can get
- 10 hooked on.
- 11 Q A card game?
- 12 A Yes, sir.
- 13 Q So go ahead. On Sunday night.
- 14 A On Sunday night we played until about something to
- 15 12. And Randy Wigfall wanted to stopped over because
- 16 he all the time wanted to learn the game, how to play
- 17 pinocle. So we got together and we wrote the point
- 18 system down for him and said we'll teach you on
- 19 Monday night. We'll go over there and play with you.
- 20 Q When you said go over, where were you planning on
- 21 going?
- 22 A We was going over to where Randy Wigfall was, which
- 23 was at the poker house in The Reserves.
- 24 Q The gambling house in The Reserves?
- 25 A Mm-hmm (affirmative).

1 Q And had you been there before?

2 A Oh, yeah. I'd been there in before.

3 Q How many times do you think you'd been in there?

4 A I guess somewhere in the neighborhood, more than five
5 but I think less than 20.

6 Q Had your wife ever been there before?

7 A Yeah. She used to be up there. That's one of the
8 reasons I'd go up there. Yeah.

9 Q So what was Randy's role at the gambling house? What
10 did he do there?

11 A Oh, well, he ran the place.

12 Q Collect the money and everything?

13 A Yes, sir.

14 Q And what was your wife's name?

15 A Ojetta.

16 Q And what did she do over there?

17 A She used to be there in the daytime, collect the
18 money for Randy.

19 Q So would it be fair to say that Ojetta was there
20 during the daytime and Randy was there at nighttime?

21 A Yes, sir.

22 Q So on this particular night you were going over there
23 to teach Randy how to play pinocle. Is that right?

24 A Correct.

25 Q And take us through what happened when you were on

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1 your way over there and when you got to Faraway
2 Drive?

3 A Well, what I did was I went and picked up Brother
4 Greene and we went back to Faraway. And at Faraway,
5 on the way I saw the gentleman who you just, the
6 witness you just spoke to. I saw him on the way up.
7 And what he done, he had -- he said he had some VCR's
8 he wanted to sell. So I said, no, I'm not
9 interested, but I'll let Randy know upstairs or the
10 guys upstairs know and if they want one, I'll tell
11 them. So, there were --

12 Q I'm sorry. Had you seen Mr. Jones before?

13 A Many times. Many times he was there. Every now and
14 then he'd hit me up for a cigarette when I'd come
15 there. Yes, sir.

16 Q All right, sir. Go ahead.

17 A And what happened is, well, we was watching -- we
18 planned on watching the football game, which was the
19 first game that Miami was going to have Ricky
20 Williams running again. So we said we were going to
21 play the pinocle game and watch the football game.
22 So what really happened then was we were sitting
23 there watching the football game until we were
24 getting ready to play pinocle, and there's a knock
25 came on the door. And Wigfall got up and said

1 that -- after I had told him about the guy with the
2 VCR and stuff.

3 So he got up and checked the door once he know
4 who I was talking about so he just got up and went to
5 the door and said, it's for you, and left the door
6 open. And just as soon as I arrived to the door,
7 that's when the door came in real fast and I got hit
8 across the head with a chair. And they run into the
9 apartment with the gun yelling, give me your money,
10 give me your money. Where is Ojetta? Where is
11 Randy? And I got popped with the chair again. I had
12 a big gash and my head was kind of --

13 Q All right. Let's go back through some of that a
14 little bit. You told Wigfall about your encounter
15 with Mr. Jones. Is that right?

16 A Correct.

17 Q And a knock on the door. It was Mr. Wigfall that
18 opened the door?

19 A Correct.

20 Q He saw Mr. Jones there and told you it was for you?

21 A Correct.

22 Q Did you ever see Mr. Jones when you got to the door?

23 A No, sir. Because the door came in very fast. No,
24 sir.

25 Q And when you said you got hit by the chair, can you

1 kind of describe for us in this layout where some of
2 those chairs would have been located? This is the
3 doorway here.

4 A Coming in here.

5 Q Okay. What was over in this area?

6 A This is the dining.

7 Q Uh-huh (affirmative).

8 A This is the entry. Okay. There was a chair that --
9 there would have been a TV over here and there would
10 be a couch over here, a love seat here. And we had a
11 chair right here because this is the chair that Randy
12 was sitting on right here. Mr. Greene was over here.
13 I was sitting here. So I got up and went to the door
14 here. And that's when I got hit.

15 Q So is it fair to say that the chair right in here is
16 the one that you got hit with?

17 A It came so fast that it was a metal chair. There was
18 more metal chairs because we had a metal chair in
19 this area here, but they didn't pass me to get it.
20 So I would say this is the chair that was hitting me.

21 Q That was a metal chair?

22 A Yes, sir.

23 Q And where on your body did you get struck with it?

24 A I got struck in the head actually, the head area
25 first. And once I went to the floor, I was hit again

1 from above the shoulder up to the head part and a
2 couple of times across the chest. He made me turn
3 over on my back. He hit me with the chair on my back
4 also.

5 Q And did you have any injuries right away?

6 A Yes, sir. Blood was going everywhere from my head.

7 Q Your head was bleeding?

8 A Yes, sir.

9 Q You said that Randy was seated over there right in
10 the living room. What is Randy usually doing when he
11 is running the gambling house to your knowledge?

12 A Most of the time he will be on the couch resting
13 because he does have a job. He be resting on the
14 couch looking at the TV.

15 Q Over on the right side?

16 A As you come in on the right side.

17 Q And to your knowledge, where would Ojetta be when she
18 was running the house during the daytime?

19 A I would not know because I be working.

20 Q Okay. So you got knocked -- you were saying you got
21 knocked to the ground, hit several times with a
22 chair, bleeding. Then what happened?

23 A And, while they was -- they was -- the other guy was
24 beating Mr. Greene on the other side with the gun at
25 first. He was beating him with the butt of the gun.

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1 And actually by him keep screaming that he says, give
2 me the money, give me the money, give me the money,
3 and using curse words. And when I kind of, you know,
4 got to the feeling that I should say something, I
5 said, don't do that to him; he don't have no money.
6 That's when he turned and fired at me. And I was up
7 against the kitchen wall over there. And he fired at
8 me at that time.

9 Q How many men entered the apartment?

10 A Two.

11 Q Can you describe the differences between the two at
12 all?

13 A Yeah. One of them was kind of -- one of them was
14 shorter than the other for sure, and one of them was
15 kind of a fair complexioned guy and the other one was
16 darker.

17 Q So one guy with the gun was over with Mr. Greene?

18 A Correct.

19 Q And what was he doing to him?

20 A He was steady -- he was beating on him from the time
21 he made contact with him until almost they left the
22 apartment I guess. Somehow when he made me turn over
23 on my stomach the last time I got hit, I didn't know
24 if that was him that passed or who it was because the
25 shot had already been fired and he fired at me. And

1 I didn't know who made the pass, who went to the
2 back, but someone went to the back.

3 Q So you heard two shots fired?

4 A Yes, sir.

5 Q The first one was where?

6 A With Mr. Greene. And the second one was at me.

7 Q And you were able to avoid that shot?

8 A Yes, sir.

9 Q Tell me again -- when you were going through what
10 they said when they came in the apartment, tell me
11 again what they were saying, who they were asking
12 for, what they wanted?

13 A They was asking for Randy and Ojetta first thing.

14 Q You heard their names?

15 A Yes, sir. Correct.

16 Q Okay. Once Mr. Greene had been shot, did they leave
17 him alone?

18 A No. After he had shot Mr. Greene, he still hit him
19 several times with the weapon. Number? Five, six
20 maybe times with the butt of the weapon.

21 Q Where was he hitting him?

22 A It had to have been close because he was standing
23 like over him. That's what I'd say.

24 Q How many times do you think he struck him?

25 A Oh, in the neighborhood of 20 times or more.

- 1 Q Do you recall who else was in that immediate area?
2 And when I say that, I mean in this living room,
3 dining room area while this was going on?
- 4 A Yeah. There was a female at the door entry, right as
5 you come in the door entry, but I couldn't recognize
6 her.
- 7 Q What was happening with her? Was she standing there,
8 or what was she doing?
- 9 A Well, the guy that was beating on me, he left back
10 and forth from her, from me to her, me to her.
- 11 Q Doing what?
- 12 A Every time he comes up he hit me with the chair. And
13 he goes back, and it looked like he was making her
14 strip. Or what I saw, she was just about stripped.
- 15 Q Were they assaulting her as well or this guy hitting
16 her with the chair as well?
- 17 A I cannot say that I actually seen him actually hit
18 her.
- 19 Q Do you know where Mr. Gordon was during all this?
- 20 A Mr. Gordon was in the back. And before the door came
21 open, actually our mind was really focused on the
22 football game. And if Mr. Gordon had went up and
23 went to the back, actually I wouldn't have taken
24 notice of it kind of.
- 25 Q Okay. And I believe you also started to tell us

1 about one of the individuals, one of the two going
2 back and forth from the front to the back. What was
3 that about?

4 **A** Well, when he made me turn over on my back, I turned
5 over on my back away from, facing from where Mr.
6 Greene was, I noticed someone went in the back, but I
7 couldn't say who it was. And I noticed when someone
8 came back out the back, they was carrying some stuff.
9 That's the last I saw of them actually in the
10 apartment.

11 **Q** When you say someone, you mean one of the two that
12 entered the apartment?

13 **A** One of the two of them. The last person that went
14 out the door was carrying some items.

15 **Q** Is it possible he had a purse and some other things?

16 **A** I think it was. That's what my recollection is, a
17 purse and some other stuff.

18 **Q** What about belongings in your pockets? What happened
19 to them?

20 **A** He took all -- when he said, give me everything in
21 your pocket, I gave him everything that I had in my
22 pocket. That's the gentleman that was hitting me,
23 had hit me with the chair.

24 **Q** The girl that you saw that was made to strip, do you
25 remember anything about her, whether she was white,

1 black, Hispanic, Asian; anything like that?

2 A Well, I would say she had to have either been white

3 or Spanish.

4 Q White or Spanish?

5 A (Nods head affirmatively).

6 Q Okay. And once the one guy came from the back of the

7 apartment and came up carrying those things, what

8 happened next?

9 A They departed, left the apartments.

10 Q What did you do when they left?

11 A As soon as they left the apartment, I got up and I

12 ran over to my friend, Mr. Greene, and found out that

13 his mouth was open. He wasn't moving. And I know,

14 you know, something, that he probably had killed him.

15 Q So you went to check on him?

16 A Yeah. So I went over. I reached up on him and hold

17 in my arms like that. But his mouth was open. So I

18 knew that he was deceased.

19 Q And what did you do at that point?

20 A At that time I yelled to Randy because he was still

21 in the apartment at the time. I told him, I said, I

22 think they killed Mr. Greene.

23 Q And what do you remember happening after that?

24 A After that, well, they had went downstairs. And I

25 noticed a bunch of motion in the parking lot. So I

1 just ran over to the window. And at this time I saw
2 both gentlemen looked like they were coming back to
3 the building.

4 Q Coming back towards the building you were in?

5 A Correct. And I left the window once -- looking out
6 the window, you could see them headed into the
7 building, but they went so close to the building that
8 I couldn't actually see if they came into the door.
9 So I ran over and locked the door.

10 Q To the apartment?

11 A Yeah. And when I locked the door, whoever was on the
12 outside, one of the two gentlemen was kicking on the
13 door. But I didn't let them in. But I only saw --
14 one went back out. Two of them came into the shadow
15 of the building but only one of them went back to the
16 parking lot that I actually seen.

17 And at this time I opened the door and started
18 going downstairs once I saw one of them. And I went
19 downstairs and I saw a dark skinned gentleman running
20 through the parking lot asking me -- well, he yelled
21 at me also, give me your keys. And I ran around the
22 back side of the building.

23 Q So two guys you saw running out as you looked out the
24 window running actually back towards the building?

25 A Coming back into the building.

- 1 Q You go and look lock the door. You hear a knock at
2 the door or a banging on the door?
- 3 A Kicking on the door.
- 4 Q Okay. And then when you look back out the window,
5 you only see one of them fleeing from out of there?
- 6 A I only could see one at this time.
- 7 Q And what did that one look like?
- 8 A He was the dark skinned gentleman.
- 9 Q The dark skinned one. Do you recall what these
10 gentlemen were wearing at all?
- 11 A No, sir.
- 12 Q You just remember that one of them was taller than
13 the other one?
- 14 A Yes, sir.
- 15 Q How about when -- you may have already covered this.
16 Was there something covering their face?
- 17 A No. It happened too fast for me to say I seen it
18 covering anyone's face because I got hit as soon as
19 the door opened and my recollection is I didn't see a
20 mask on or anything.
- 21 Q Do you remember giving a statement in this case?
- 22 A Yes, I did.
- 23 Q To the investigators?
- 24 A Right.
- 25 Q If I showed you a copy of that, would it help refresh

1 your memory as to some of those details?

2 A I think it could.

3 Q I want to show you, just have you look at this part
4 on page 2 here. Just look at this part and read it
5 to yourself.

6 A On page 2?

7 Q Yeah.

8 (Pause - witness reviewing document)

9 Q Is that the statement that you gave?

10 A Correct.

11 Q To the investigator?

12 A Correct.

13 Q And what is it that you recall about whether any of
14 the two had something on their face? Did you say
15 that one of them may have had something on their
16 face?

17 A Yeah. But I can't actually say that I saw that.
18 When I got hit when they were coming in, it kind of,
19 you know -- it happened so fast when they came in the
20 door that I couldn't just actually say that they had
21 their faces covered.

22 Q Were they allowing you to look at them?

23 A No. He told me, the first thing they did after they
24 hit me with the chair, don't look up at me, don't
25 look at up me. Give me your money, this and this.

1 Q What exactly was taken from you that you had on your
2 person?

3 A My wallet, my keys, and small change that I had.

4 Q Beg the Court's indulgence. Do you recall whether
5 the -- you mentioned that when you looked out the
6 window the darker skinned fellow was running away.
7 Do you remember from inside the apartment which one
8 of those two had the gun?

9 A Yeah. The darker skinned individual.

10 Q Darker one. Okay. And when you say which one you
11 saw with the gun, was that when they initially came
12 in the apartment?

13 A That's -- he was the one that actually had the gun
14 when they came in.

15 Q So after you got hit and knocked down on the ground,
16 you couldn't say for sure who had the gun or if it
17 was being passed back and forth or anything like
18 that?

19 A Correct.

20 Q Thank you, sir.

21 THE COURT: Cross examination.

22 MR. HISKER: May it please the Court.

23 CROSS EXAMINATION

24 BY MR. HISKER

25 Q Hello, Mr. Huggins.

- 1 A Hi.
- 2 Q You do recall giving a statement to the police,
3 correct?
- 4 A Correct.
- 5 Q You would agree that when these kind of things are
6 happening you see things and miss details. It all
7 happened very fast?
- 8 A Correct.
- 9 Q But there are certain things you focus in on?
- 10 A Yeah.
- 11 Q Under stress you focus in on things that attract your
12 attention?
- 13 A I would say so.
- 14 Q So you would agree with me that you told the police
15 that a tall black male came in the apartment with a
16 shotgun?
- 17 A Correct.
- 18 Q There's no question it was a tall black male, the
19 dark male, with the shotgun?
- 20 A Correct.
- 21 Q And you focused in on that?
- 22 A Correct.
- 23 Q And then you also told the police that the tall guy
24 with the shotgun was pointing it at James?
- 25 A Correct.

- 1 Q So you focused in on the tall dark male pointing the
2 shotgun at James?
- 3 A Right. Initially when he came in, I can say that
4 when they came in because the guy that -- the other
5 gentleman, the one that hit me, he was back and forth
6 from me to the female.
- 7 Q And there was a lot going on?
- 8 A Correct.
- 9 Q But you are focused in on certain things?
- 10 A Correct.
- 11 Q And those are the details that you remembered when
12 you gave your statement to the police?
- 13 A Correct.
- 14 Q And you remembered those details well then because
15 you told the truth and you put them in your
16 statement?
- 17 A Correct.
- 18 Q So first a tall black, tall dark male comes in the
19 apartment with a gun. And then you see the tall dark
20 male holding the shotgun on James. And then you say
21 in your statement to the police that the tall dark
22 male shoots James. You see that, too, correct?
- 23 A Correct.
- 24 Q And you focused in on the tall dark male shooting
25 James?

- 1 A Correct.
- 2 Q And after that you said something to the tall dark
3 male and the tall dark male pointed the gun at you?
- 4 A Correct.
- 5 Q And he actually shot at you but missed?
- 6 A Correct.
- 7 Q So those are details in your mind that you distinctly
8 remember?
- 9 A Correct.
- 10 Q No question about those details?
- 11 A Correct.
- 12 Q And nowhere in your statement did you ever say that
13 that gun left the hands of the tall dark male?
- 14 A Well, no. But I'm saying that when they made me --
15 like the individual that went to the back, I don't
16 know who had the gun, because he made my turn over
17 and away from him after that happened. So I can't --
- 18 Q Right. After those four things happened though,
19 there is no telling. Somebody else could have had
20 the gun at that point, right?
- 21 A Could have. I don't know.
- 22 Q But for those four times, there is no question that
23 the tall dark male held the gun the entire time?
- 24 A To my recollection, yes.
- 25 Q Thank you. That's all I have.

1 **THE COURT:** Redirect?

2 **MR. GOLDBERG:** No, sir.

3 **THE COURT:** All right. Thank you very much,
4 sir. You may come down. All right, ladies and
5 gentlemen. Let's take our lunch break at this time.
6 It's now a little over after 1. I'm going to ask you
7 to be back in the jury room at 2:15. That will give
8 you a little over an hour for lunch at which time we
9 will continue with the trial.

10 Again I'll ask you not to discuss the case among
11 yourselves when you return to the jury room or with
12 anyone else over the lunch hour. I hope you have a
13 pleasant lunch. We'll see you at 2:15. Thank you
14 very much. And again return to the jury room, not
15 downstairs, but up here.

16 **THE BAILIFF:** Be seated until the jury leaves.
17 Please be seated.

18 (Jury out at 1:08 p.m.)

19 **THE COURT:** Stand at ease. Just do you want to
20 put your -- Mr. Hisker, your objection to the
21 photographs.?

22 **MR. HISKER:** I can do that now briefly.

23 **THE COURT:** Go ahead. I don't know what numbers
24 they were.

25 **MR. HISKER:** I'm going to take a look at them

1 right now. I objected to State's 9 and 10 because
2 they are duplicative of State's 11. I believe that
3 State's 11 adequately depicts the scene. It's a pull
4 back shot that shows the chairs knocked down. It
5 shows the blood on the front of the counter. It
6 shows the general disarray of the room. It's an
7 adequate description of the crime scene.

8 The other two photographs are, I am looking at
9 State's 10, is a straight shot blowup of the blood.
10 I object to this. I just believe it's gore, and it's
11 admitted solely for the purposes of inflaming the
12 jury. And my same objection goes to State's 9 based
13 on, first of all, relevance. They're not relevant in
14 the first place. They don't tell anything about this
15 case. And if they are relevant, they're adequately
16 described in State's 11. So that under 403, 9 and 10
17 are unnecessary for this case.

18 **THE COURT:** The state's position.

19 **MS. CAMPBELL:** The State's position is they show
20 different angles of the room, and basically it's
21 corroborative of Mr. Huggins' testimony.

22 **THE COURT:** Well, they were admitted before the
23 corroboration.

24 **MS. CAMPBELL:** Yes, sir. But that was the
25 purpose. We were going to go there.

1 **THE COURT:** I had viewed them at a bench
2 conference and ruled at that time even though they
3 appear to be somewhat duplicative I did not think
4 they were inflammatory or prejudicial, created any
5 more prejudice than the first picture that was shown
6 and overruled your objection and made that part of
7 the record.

8 **MR. HISKER:** Thank you, sir.

9 **THE COURT:** Thank you very much.

10 **MS. CAMPBELL:** Your Honor, for the record, at
11 2:30 I've got the interpreter coming for Ms. Garcia.
12 I am calling him right now to see if he can be here
13 15 minutes early.

14 **THE COURT:** Well, if he's not, then call a
15 different witness. I want to keep moving.

16 **MS. CAMPBELL:** We are.

17 **THE COURT:** You understand. All right. We'll
18 stand at ease until 2:15.

19 (Whereupon, State's Exhibit No. 6, a statement,
20 is re-marked as State's Exhibit No. 6-A)

21 (WHEREUPON, State's Exhibit No. 6-A is re-marked
22 for identification.)

23 (Whereupon, a lunch break is taken)

24 **THE COURT:** Is the State ready to proceed?

25 **MS. CAMPBELL:** The State's ready.

1 **THE COURT:** Defense ready to proceed?

2 **MR. HISKER:** The defense is ready.

3 **THE COURT:** Bring the jury, please.

4 (Jury in at 2:20 p.m.)

5 **THE BAILIFF:** The jury is all present, Your
6 Honor.

7 **THE COURT:** All right. Thank you very much.
8 All right. Ladies and Gentlemen, I hope you had a
9 pleasant lunch. We're now ready to continue with the
10 trial. Solicitor, call your next witness.

11 **MS. CAMPBELL:** The State calls Eliana Garcia.

12 **THE CLERK:** I need to swear the interpreter
13 first.

14 BRIT HUNT, after being duly sworn, interprets
15 for the court as follows:

16 **THE CLERK:** Please state your full name.

17 **MR. HUNT:** Brit Hunt.

18 **THE COURT:** Thank you.

19 ELIANA GARCIA, after being duly sworn, testifies
20 as follows:

21 **THE CLERK:** Thank you. Please have a seat in
22 the witness stand and state your full name for the
23 record.

24 **THE COURT:** Ladies and gentlemen, the witness is
25 being accompanied by a certified court interpreter

1 due to -- I'm not sure which language barrier there
2 is. And he will translate the questions and relay
3 them to the witness. Then the witness will answer.
4 He will translate and relay that answer to you. It's
5 a little slower process, but nevertheless, it's a
6 regular process we use here in court. So, Ms.
7 Campbell, you may proceed.

8 **MR. HUNT:** My name is Eliana Navus Garcia.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL**

11 **Q** How old are you, Ms. Garcia?

12 **A** Forty-two years of age.

13 **Q** Do you currently live here in --

14 **A** Excuse me. 45.

15 **Q** All right.

16 **A** I am nervous. I'm sorry.

17 **Q** That's okay. Do you currently live in South
18 Carolina?

19 **A** I have been living here in South Carolina, but I went
20 to Los Angeles.

21 **Q** Can you speak some English?

22 **A** Yes.

23 **Q** But today did you tell me you'd feel more comfortable
24 with an interpreter?

25 **A** Correct.

1 Q I want to go back to August 8 of 2005. Where were
2 you living then?

3 A I was living with a friend of mine. Her name is
4 Rhonda. And her husband, Karl. I don't remember
5 Karl's last name.

6 Q Who else was living in the apartment with you besides
7 those two people?

8 A My friend's son whose name -- they call him Jay-Jay.

9 Q Did you know his real name was Walter Graves?

10 A Yes.

11 Q That evening of August the 8th, did something draw
12 your attention and make you go to the door?

13 A Yes.

14 Q And what was it?

15 A I heard some noise like someone arguing. And I
16 opened the door to see if maybe it was the husband of
17 my friends because my friend, because he was outside.
18 And when I opened the door, the man who hit me was at
19 the doorway. When I opened the door, he immediately
20 hit me in the face and asking me, where is the money.

21 Q What did he hit you with?

22 A With his hands.

23 Q Were you still inside your apartment when he hit you?

24 A No. Because when I opened the door, he pulled me by
25 my shirt and pulled me out.

- 1 Q So were you in the hallway?
- 2 A No. I was in the threshold of the door and I kind of
3 stuck my head out and he pulled me out.
- 4 Q Okay. After he hit you and pulled you outside your
5 apartment, what happened?
- 6 A When he hit me on my back, that's when I fell into
7 the other apartment and landed on the floor.
- 8 Q Was the door open to the other apartment?
- 9 A Yes.
- 10 Q Once you were inside the other apartment -- and where
11 was the other apartment?
- 12 A In front.
- 13 Q Across from yours?
- 14 A Yes.
- 15 Q Once you fell into the other apartment, what did you
16 see?
- 17 A I saw two gentlemen laying on the floor and one woman
18 on the floor.
- 19 Q Where was the man that had hit you at that point?
- 20 A With me. Because from the moment I went -- hit the
21 floor in there, he began hitting me.
- 22 Q And what was he hitting you with at this point?
- 23 A With chairs. With a chair.
- 24 Q I show you State's Exhibit 8. Is it a chair like
25 that?

- 1 A Yes.
- 2 Q And where was he hitting you with the chair?
- 3 A In my head and my back.
- 4 Q Was there anyone else in the apartment that was doing
- 5 anything to the people lying on the floor?
- 6 A There was another one, I believe a partner of his.
- 7 Q And can you describe the two men generally?
- 8 A The only thing I could say is one was tall and one
- 9 was short. The short one I can't really describe
- 10 because he was wearing a mask.
- 11 Q Were you able to get a good look at either one of
- 12 their faces?
- 13 A The tall one.
- 14 Q Which one was the one that hit you initially?
- 15 A The tall one.
- 16 Q Had you ever seen any of the two partners before?
- 17 A No.
- 18 Q Did you see any weapons?
- 19 A Yes.
- 20 Q What kind of weapons did you see?
- 21 A A large one, a long one. I don't know exactly what
- 22 type it was. A rifle.
- 23 Q And which person did you see having the rifle?
- 24 A The tall one.
- 25 Q And is that the one that was hitting you?

- 1 A Yes.
- 2 Q Was the other man hitting other people?
- 3 A When I was there during that time, I didn't see him
- 4 hit anyone.
- 5 Q What was he doing?
- 6 A He was checking around inside the apartment getting
- 7 things like jewels I guess. I can't really say what.
- 8 Q What were the two partners saying? Could you hear
- 9 them saying anything?
- 10 A No. Just at the end when they did the crime.
- 11 Q While you were on the floor, did one of them come up
- 12 and say something to you about something being fake?
- 13 A Yes.
- 14 Q What did he say?
- 15 A The tall one came and asked me if I thought that the
- 16 rifle was fake and he pushed it to my back.
- 17 Q What happened next?
- 18 A He tried to shoot it and he made a motion like this.
- 19 And then he shot it in the air I think, but I'm not
- 20 sure. I was very nervous.
- 21 Q Could you tell whether or not he had shot anyone?
- 22 A At that moment, no.
- 23 Q Were they trying to get anything off of you?
- 24 A Yes.
- 25 Q Did you get hit any more?

1 A Yes.

2 Q And where were they hitting you?

3 A The same side, the head and the back.

4 Q What were they hitting you with?

5 A Always with the chair.

6 Q Did you end up giving them anything that they wanted?

7 A They removed my wallet.

8 Q And where was your wallet when they removed it?

9 A It was in my pants on the left-hand side.

10 Q And did at least -- did one of them still have the

11 gun while they were robbing you?

12 A Yes.

13 Q How many shots do you remember being shot while you

14 were in there?

15 A Two.

16 Q Were they shot close in time?

17 A Yes.

18 Q And at first did you know anyone had been shot?

19 A I was --imagined that the man that they were hitting

20 was injured, but I wasn't sure if they had killed him

21 or not.

22 Q When you say they were hitting the man they shot, did

23 they you hit him?

24 A Yes. First they were hitting him and then later they

25 shot him.

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- 1 Q Did they hit him any more after they shot him? Do
2 you remember?
- 3 A They began hitting everyone.
- 4 Q Everyone?
- 5 A Yes.
- 6 Q Even after they'd shot him?
- 7 A Yes.
- 8 Q And was one of them hitting him or were both of them
9 hitting people?
- 10 A Only one of them.
- 11 Q Which one was doing the hitting?
- 12 A The tall one.
- 13 Q Do you know whether or not the other one was hitting
14 other people?
- 15 A Not that I saw.
- 16 Q Who actually -- did you throw your wallet on the
17 floor?
- 18 A Yes. The short one took it out.
- 19 Q The short one took it out?
- 20 A Yes. Because the tall one told him to check me.
- 21 Q So were the two of them acting together?
- 22 A Yes.
- 23 Q Do you recall them saying anything after doing the
24 shooting and they were getting ready to leave?
- 25 A No. The whole time I was very quiet, nervous and

1 crying.

2 Q At some point did one of them make you take off your

3 clothes?

4 A Yes.

5 Q And how did that happen?

6 A The tall one told me to stand up after he had killed

7 the other man. And the short one had said he'd

8 killed the other man, let's go. The short one was

9 going toward the door to open the door and then the

10 tall one said, no. Check the rooms in the back and

11 to let me finish off this. And I can't use the word.

12 That's what the tall one said, to kill me.

13 Q To kill you?

14 A Yes. He said -- the tall one said to the short one,

15 let me finish off this B. And told me to stand up

16 and take my clothes off while the other one went to

17 check in the back.

18 Q And did you take your clothes off?

19 A Yes.

20 Q You said that you were crying?

21 A Yes.

22 Q Why were you crying?

23 A Because I was scared they were going to kill me.

24 Q So once you had taken your clothes off, what

25 happened?

1. A The short one was going out and then the tall one
2 started to laugh and he told the other one, look at
3 her, because I was naked and laughing.
- 4 Q Were they both laughing?
- 5 A The tall one was laughing. I'm not sure about the
6 other one because where he was I couldn't turn around
7 to see.
- 8 Q Were you able to get away?
- 9 A I tried to. When he was turned around laughing, his
10 face was turned; and with my left arm I hit the gun
11 and ran out of the apartment.
- 12 Q Where was the shorter one when you ran out of the
13 apartment?
- 14 A He was a little behind the tall one and near the
15 kitchen in the apartment.
- 16 Q Where did you run?
- 17 A I ran to the apartment where I was living.
- 18 Q Is that across the hallway?
- 19 A Yes.
- 20 Q Once you got into your apartment, what happened?
- 21 A I ran in and locked the door. I think I locked the
22 door. But I was so nervous. I'm pretty sure I
23 locked the door. But then I ran into Jay-Jay's
24 bedroom. And I told him, Jay-Jay, call 911. Jay-Jay
25 woke up because he was asleep. And he asked me,

1 what's going on, when I heard them break the door in.
2 And I couldn't answer him quickly and I ran into the
3 closet.

4 Q Once you were in the closet, could you see out of the
5 closet?

6 A Yes.

7 Q And could you tell who had come into the apartment?

8 A The tall man.

9 Q Could you see the other man behind him?

10 A No.

11 Q Once inside -- once at least the tall one was inside,
12 could you tell what he was doing?

13 A Yes.

14 Q What was he doing?

15 A He was asking the child where is the telephone and
16 the money.

17 Q And when you say the child, who do you mean?

18 A Oh, to Jay-Jay. He was only 15 years old.

19 Q Did they do anything else to Jay-Jay?

20 A Yes.

21 Q What?

22 A When they asked him for the money and the telephone,
23 they pulled him out of bed and began hitting him and
24 they drug him into the other room and starting
25 hitting him with the rifle.

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1 Q When you say "they", is it the same two men as in the
2 other apartment, the two bad guys?

3 A Yes. But just one, the tall one.

4 Q Do you remember what either one of them were wearing?

5 A The tall one, I just remember he had on blue jeans,
6 but I really can't remember much.

7 Q And what about the shorter one?

8 A No. I don't remember anything.

9 Q What all did they take from you?

10 A My other wallet, the one on the right-hand side.

11 Q Did they take any jewelry?

12 A Truthfully, I don't know, because when he grabbed me,
13 they may have fallen onto the floor. I don't know.

14 Q Okay.

15 MS. CAMPBELL: Beg the Court's indulgence.

16 (WHEREUPON, State's Exhibit No. 100 is marked
17 for identification.)

18 (WHEREUPON, State's Exhibit No. 101 is marked
19 for identification.)

20 (WHEREUPON, State's Exhibit No. 102 is marked
21 for identification.)

22 (WHEREUPON, State's Exhibit No. 103 is marked
23 for identification.)

24 (WHEREUPON, State's Exhibit No. 104 is marked
25 for identification.)

1 (WHEREUPON, State's Exhibit No. 105 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 106 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 107 is marked
6 for identification.)

7 Q I want to show you these photographs. Will you look
8 through them?

9 A Yes.

10 Q And did you have those items in your wallet that day?

11 A Yes. All of them.

12 MS. CAMPBELL: Your Honor, at this time we'd
13 offer State's Exhibit 102 and 107.

14 COURT REPORTER: 102 and 107 or through?

15 MS. CAMPBELL: Through.

16 MR. HISKER: No objection, Your Honor.

17 THE COURT: Without objection.

18 MS. CAMPBELL: And also, Your Honor, I think
19 without objection, 100 and 101.

20 MR. HISKER: Yes. Yes. No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 100 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 101 is admitted
25 into evidence.)

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1 (WHEREUPON, State's Exhibit No. 102 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 103 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 104 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 105 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 106 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 107 is admitted
12 into evidence.)

13 **MS. CAMPBELL:** Your Honor, permission to
14 publish?

15 **THE COURT:** Yes.

16 **Q** I show you State's Exhibit 100. Do you recognize
17 that?

18 **A** Yes.

19 **Q** What is it?

20 **A** It's a small photograph of a nephew of mine. I'm
21 sorry. A niece of mine.

22 **Q** Niece?

23 **A** (Nods head affirmatively).

24 **Q** And where was that before you were attacked?

25 **A** On a chain around my neck.

1 Q Do you know what happened to it?

2 A No.

3 Q I show you State's Exhibit 101. Do you recognize
4 that?

5 A Yes.

6 Q And what is this?

7 A It's the letter of my first name.

8 Q And where was that before the attack?

9 A On a chain around my neck.

10 Q Do you know what happened to it?

11 A No.

12 (WHEREUPON, State's Exhibit No. 108 is marked
13 for identification.)

14 (WHEREUPON, State's Exhibit No. 109 is marked
15 for identification.)

16 (WHEREUPON, State's Exhibit No. 110 is marked
17 for identification.)

18 MS. CAMPBELL: Your Honor, we'd offer State's
19 Exhibit Nos. 108 through 110 without objection.

20 MR. HISKER: That's correct. No objection.

21 (WHEREUPON, State's Exhibit No. 108 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 109 is admitted
24 into evidence.)

25

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- 1 (WHEREUPON, State's Exhibit No. 110 is admitted
2 into evidence.)
- 3 Q Do you remember the police taking some pictures of
4 your face that day?
- 5 A Yes.
- 6 Q I'm going to show you these. Do you recognize those?
- 7 A Yes.
- 8 Q And it's 109. The marks on your forehead there, how
9 did those get there?
- 10 A When I was face down and he was hitting me, that was
11 where it hit, my forehead hit the floor.
- 12 Q State's Exhibit 108 and 110, the injuries around your
13 eyes, how did you get those?
- 14 A The thing is I was wearing my glasses, and when he
15 hit me and pushed me to the floor, that was the
16 result. They were damaged.
- 17 Q Did the police show you some photographs later on?
- 18 A I don't remember.
- 19 Q You were not able to identify the two men that
20 attacked you?
- 21 A They asked me, but since my glasses -- I suffer from
22 poor vision. Since my glasses were still in the
23 other apartment, I couldn't do it.
- 24 Q Had you ever seen either of the two men before?
- 25 A Never.

1 Q And just to be straight for the record, you said
2 there were three people on the floor when you went in
3 there?

4 A Yes.

5 Q And then in addition, there were the two partners
6 doing the crime?

7 A Correct.

8 Q Do you remember giving a statement back when this
9 happened?

10 A Yes.

11 Q Could I let you look at it to refresh your memory?

12 A Of course. Yes.

13 Q This paragraph, does that help refresh your memory?

14 A Yes.

15 Q And the man with the gun, how did you describe him to
16 the police right after this happened?

17 A That he was more or less a height of around five-ten
18 and that he had blue jeans.

19 Q Do you remember describing his skin tone?

20 A Yes.

21 Q And what did you say?

22 A That he was light skinned but black.

23 Q And do you remember describing his shirt?

24 A It was a kind of short shirt.

25 Q Okay. And that description was of the man with the

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1 gun?

2 A Yes.

3 Q Thank you. I don't have anything else. Please
4 answer any questions the defense may have.

5 MR. HISKER: No questions, Your Honor.

6 THE COURT: No questions. She can come down.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: May this witness be excused?

9 Without objection. Next witness.

10 MR. GOLDBERG: The State calls Jerry Gordon.

11 JERRY GORDON, after being duly sworn, testifies
12 as follows:

13 THE CLERK: Thank you. Please have a seat in
14 the witness stand and state your full name for the
15 record.

16 THE WITNESS: My full name is Jerry Gordon.

17 DIRECT EXAMINATION

18 BY MR. GOLDBERG

19 Q Mr. Gordon, how you doing?

20 A Pretty good, sir.

21 Q Good. Can you tell us a little bit about yourself;
22 where you're from, what you do?

23 A I'm from Charleston, South Carolina. I retired from
24 the Army back and forth overseas to Ft. Jackson. I
25 retired, so me and my wife decided to stay here in

1 Columbia.

2 Q What do you do now? Do you work at all?

3 A I work for Richland County Refuse Control.

4 Q What do you do for them?

5 A Refuse control, my job consists of trucks going down
6 the road uncovered, brief flying off the trucks.

7 These trucks all have gravel. The gravel falls off,
8 bumps into the road, knocking out windshields. Some
9 of them, neighbors with dirty yards they don't clean
10 up, you have to go investigate that. Someone
11 illegally dumping on your property, so we have to
12 deal with that.

13 Q Going back to August of 2005, how did you come to be
14 friends with or come to know Randy Wigfall and Walter
15 Huggins and James Greene?

16 A Okay. Me and Walter Huggins, we entered the Army the
17 same day, August 18th, 1971. And we retired the same
18 day, 1 September of 1991. And we retired the same
19 day. And at that time I still had a little dealing
20 with Officer Huggins. He was a drill Sergeant at Ft.
21 Jackson. Right after I came back from Alaska in '83,
22 I think he was getting ready to go overseas.

23 Once I find out that he had retired, I didn't
24 run into him until I found out looking for a barber
25 shop and someone told me, check it out, the barber

Jerry Gordon - Direct by Mr. Goldberg

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1 shop. Then I saw him working at his own barbershop.

2 And about a couple of years later, I think a few
3 years later, me and Mr. Greene, I got sort of
4 involved with him because we used to meet to the
5 barber shop. And what we had in common was pinocle,
6 because we could play pinocle from Friday afternoon
7 until just time to go back to work Monday morning.
8 And we was very sort of addicted to it. Because my
9 wife taught me about that. But that's all we used to
10 do, just play cards.

11 And I think I met Randy probably about '80 --
12 I'm sorry. I'm sorry. 1995 or '96. I think Randy
13 had his own body shop. And because I used to ask
14 Randy how much it would cost to paint my little car
15 for me. So back and forth we started talking. I
16 found out Randy is also from my home town, from
17 Charleston. So we sort of get a little closer
18 because his brother used to bring us fish and shrimp
19 from Charleston and stuff. And, you know, we sort of
20 get close that way.

21 Q Back in August of '05, specifically August the 8th of
22 2005, did you have plans to meet up with these
23 fellows?

24 A Say it again, sir?

25 Q Back on August 8th of 2005, did you have some plans

1 to meet up with Mr. Huggins and Mr. Greene and
2 Mr. Wigfall?

3 A Yes, sir.

4 Q What was that about?

5 A We was ready to teach Randy how to play pinocle.
6 Because that Sunday I think we were playing cut
7 throat at Mr. Greene's house and Randy got
8 interested. So he wanted to learn the game. So we
9 said we'd link up with him and play some and teach
10 him the game called pinocle.

11 Q Where were you going to teach him how to play?

12 A We were going off Faraway Drive where the incident
13 happened at.

14 Q Is that the The Reserves Apartments?

15 A Yes, sir.

16 Q Is that [REDACTED] apartment?

17 A Yes, sir.

18 Q Okay. Had you been there before that night?

19 A Yes, sir.

20 Q How many times do you think you'd been there?

21 A I had been there quite a few times, sir.

22 Q Had you ever gone over there to play the poker
23 machines?

24 A Yes, sir. I tried sometimes.

25 Q And what was Randy's role, Randy Wigfall's role with

Jerry Gordon - Direct by Mr. Goldberg

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1 the poker machines?

2 A Mr. Wigfall, he was probably the operator of the

3 machines.

4 Q Was that during the day or at nighttime?

5 A No. Nighttime, sir.

6 Q Well, do you know if he ever work during the day?

7 A Oh, yes. Definitely. Yes, sir.

8 Q Do you know if anybody else operated the place as

9 well?

10 A Yes, I do. In the daytime, Ms. Ojetta operated it in

11 the daytime.

12 Q Ms. Ojetta?

13 A (Nods head affirmatively).

14 Q And on the 8th, Randy was operating the machines that

15 night?

16 A Yes, sir.

17 Q When you say "operating", what exactly does that

18 mean?

19 A Well, he were running the house.

20 Q Did he handle the money?

21 A Yes, sir.

22 Q And what time did you get over to the apartment that

23 night?

24 A I'd say I got over there anywhere between 7 --

25 Gunsmoke and all that. Around about 7:35, 7:40,

1 inbetween there.

2 Q And what did you do when you got there?

3 A When I walked in, what I did was I just went up, came
4 in. I checked all the rooms and started talking.
5 And I seen two ladies in the first room who started
6 talking. And just waiting, just killing time until
7 we get ready to play cards.

8 Q When you say you saw them in the first room -- if I
9 could get you to take that -- this is a diagram of
10 the apartment and this would be the entrance here.
11 What do you mean?

12 A The first bedroom would be right here, sir.

13 Q And there were machines in that room?

14 A Yes, sir. Four machines been in this room lined up
15 on this wall.

16 Q Okay. You said there were two ladies in there
17 playing machines?

18 A Yes, sir.

19 Q And you went to talk to them for a few minutes?

20 A Yes, sir.

21 Q Did you play the machines?

22 A Yes, sir. I put a couple of dollars in, sir.

23 Q Okay. Who else was in the apartment at the time?

24 A There was another person in the back bedroom playing
25 the machine also, in the last bedroom playing the

Jerry Gordon - Direct by Mr. Goldberg

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1 machine. So I came back up. Then I start playing
2 the machine with the two ladies in the first bedroom.

3 Q And what's the next thing you remember happening?

4 A Oh. The next thing, while I'm playing the machines,
5 sir, that's when the chaos start. It seemed like a
6 gun went off. And we wanted to find out what exactly
7 what is wrong in that room. But we know --but I
8 sensed it was trouble. What I tried to do was get
9 out there and see what's going on. But during that
10 period of time we sort of hesitate. And I tried to
11 get Ms. Regina in the closet because no one know she
12 was back there. Somebody -- but I believe the other
13 lady and myself was detected.

14 So when the person came in the room, all I could
15 hear is, throw your money on the floor. Throw your
16 wallet on the floor, throw your wallet on the floor,
17 throw your wallet on the floor. And I noticed he had
18 a shotgun. When I turned around, don't look at me,
19 don't look at me. Turn around, turned around, turn
20 around. And so during that period of time he told
21 me, go down the hall, go down the hall, go down the
22 hall. So he had the shotgun on me. So I walked down
23 the hall. He said, go in this room here, go in this
24 room. So that was the bathroom.

25 Q The bathroom?

1 A Yes, sir. And he said, kneel, get down. So I
2 kneeled down. And the next thing I know, he said,
3 strip. So what he want to try to do once I had
4 stripped, he went through my pants pocket and see if
5 I had any more money. So I didn't have any money,
6 any more money. The only thing, the little money I
7 had was in my wallet.

8 Q You said that all that happened after you heard a
9 gunshot. Is that right?

10 A It could have been a gun or two gunshots at the time.
11 I'm not for sure, sir.

12 Q Had you heard something before then, before the
13 gunshot?

14 A Well, the only thing I can say, it sound like a
15 little noise went up front before the last shot went
16 off.

17 Q Did it sound like there was a knock at the door?

18 A Well, I think somebody knocked and came in. But I
19 thought it was somebody else that I know always talk
20 loud all the time.

21 Q And at what point did you realize that that wasn't
22 the case?

23 A When I heard a shot.

24 Q And then you said that he came in, pointed the gun at
25 you. You threw your wallet on the floor and he led

Jerry Gordon - Direct by Mr. Goldberg

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1 you down to the bathroom?

2 **A** Yes, sir.

3 **Q** What did you do while you were in the bathroom?

4 **A** Well, when I was in the bathroom, he told me to
5 strip. So I did. And then after then he checked my
6 pants pocket. He wanted to make sure I didn't have
7 any money.

8 **Q** What exactly was taken from you?

9 **A** What exactly was taken from me, military I.D. card,
10 driver's license, All South Credit Union, my Exxon
11 credit card and my I.T.C. Fort Benning card.

12 **Q** Was there any cash in your wallet?

13 **A** Yes, sir. I think I had about \$52 in there.

14 (WHEREUPON, State's Exhibit No. 111 is marked
15 for identification.)

16 **Q** I want to show you what's been marked as State's
17 Exhibit 111, have you take a look at that. Do you
18 recognize those?

19 **A** Yes, sir. That's my driving license and military
20 I.D. card.

21 **Q** Those are the ones that were taken from you that
22 night?

23 **A** Yes, sir.

24 **MR. GOLDBERG:** At this time we'd move State's
25 111 into evidence, Your Honor.

1 **MR. HISKER:** No objection.

2 **THE COURT:** Without objection.

3 (WHEREUPON, State's Exhibit No. 111 is admitted
4 into evidence.)

5 **Q** The fellow that approached you with the shotgun, did
6 you get a good look at his face?

7 **A** No, sir. During that time he told me not to look at
8 him. So the corner of my eye, if I could catch
9 something, like he had blue jeans or something like a
10 mask or something over his face, but I could see the
11 eyes but not much because the hallway, the steps are
12 a little dark in the hallway.

13 **Q** You can see his eyes but not really much else of his
14 face?

15 **A** Right, sir.

16 **Q** Any idea about height or weight?

17 **A** I'd say probably about five, maybe six, could have
18 been six feet tall because I'm pretty tall. Because
19 when I'm walking, I think I catch a glimpse of him
20 around my shoulders or whatever.

21 **Q** And what happened after the gunman made you strip and
22 left you in the bathroom?

23 **A** Okay. After, during that time while I was putting my
24 clothes back on, Randy, I didn't even know Randy was
25 in the bathroom.

Jerry Gordon - Direct by Mr. Goldberg

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- 1 Q Where was he?
- 2 A Randy was in the linen closet hiding. He was in the
3 linen closet. During that period of time --
- 4 Q Stop. I hate to interrupt you. I'm sorry. Just so
5 we know where we're talking about here; for
6 reference, State's 99, is this the bathroom you were
7 in?
- 8 A This is the bathroom where I was in here, and Randy
9 was right up here in the linen closet.
- 10 Q Okay. I'm sorry. Go ahead. He was in the closet?
- 11 A And I heard somebody slid -- like mentioned my name,
12 Gordon. Here you go. Here's you some money. Just
13 give them the money. If there isn't any problem,
14 they'll go. So when he -- they came back down the
15 hall, I had the money on the floor. And I had my
16 cellphone off. And he got the money. Once they got
17 the money --
- 18 Q Where did that money come from?
- 19 A From Randy.
- 20 Q Okay.
- 21 A But Randy was in the linen closet. He throwed me the
22 money.
- 23 Q Do you know why he did that?
- 24 A Sir?
- 25 Q Do you know why he did?

1 A Well, if they could get the money, maybe they might
2 go. So that's the reason he did it.

3 Q So what happened after he gave you the money?

4 A Once they got the money, he approached back up front.
5 And during that time I started putting my clothes.
6 And I think they had left during that period of time.
7 Then I went in the other bedroom across from the
8 bathroom. There was someone hiding beneath the table
9 in there. That's when the third person went in, in
10 there.

11 Q Was it the same man that you had seen playing the
12 machines earlier in the back?

13 A Yes, sir.

14 Q Okay.

15 A And what he did, he knocked the window out. And he
16 jumped from the second floor window, and I followed
17 right behind him. And once I got out of there,
18 that's when I think I called 911.

19 Q And did you get injured when you jumped out of the
20 window?

21 A Yes, sir. I had a little jog in my back.

22 Q Did you lose any items of clothing?

23 A My bedroom slippers.

24 Q Your slippers?

25 A Yes, sir.

Jerry Gordon - Direct by Mr. Goldberg

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1 Q How would you describe the environment in the
2 apartment when all this was taking place?

3 A Hostile.

4 Q Hostile?

5 A Yes, sir. Because actually what I found out later,
6 not later, but when the shotgun come there, I knew it
7 was hostile because there was some shots. So it had
8 to be a hostile environment.

9 Q Thank you, sir. That's all I have.

10 THE COURT: Cross examination.

11 MR. HISKER: Thank you.

12 CROSS EXAMINATION

13 BY MR. HISKER

14 Q Hello, Mr. Gordon.

15 A How you doing, sir?

16 Q Fine. How are you?

17 A All right.

18 Q Do you recall giving your statement to the police?

19 A Yes, sir.

20 Q And there's a lot going on in this incident, right?

21 A Yes, sir.

22 Q And it's certainly a nervous time?

23 A Definitely, sir.

24 Q You agree that you told the police the man with the
25 gun had on a ski mask?

- 1 A I probably said it, sir; might have.
- 2 Q And you could only see his eyes?
- 3 A Yes, sir.
- 4 Q So you were describing the type of ski mask that
- 5 pulls down and fully covers everything but eye holes?
- 6 A It could be. I'm not for sure, but it could be.
- 7 Q But that's what you believe you were describing at
- 8 the time?
- 9 A Yes, sir.
- 10 Q And this was the man with the gun?
- 11 A Yes, sir.
- 12 Q And you're absolutely certain that you didn't see a
- 13 second guy with the gun?
- 14 A Sir, I couldn't tell you if -- who it was with the
- 15 gun. But I know exactly what I said in this regard.
- 16 To the best of my knowledge, that's what it was.
- 17 Q And what you believed at the time you talked to the
- 18 police was that only one person had a gun, correct?
- 19 A What I could identify.
- 20 Q Right.
- 21 A Because that's the one that came in the room with us
- 22 with the shotgun.
- 23 Q And I understand. You're telling me there was a lot
- 24 going on at the time. But from your recollection
- 25 that day --

Jerry Gordon - Cross by Mr. Hisker

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1 A Yes, sir.

2 Q -- you only recall seeing one person with a gun?

3 A Yes, sir.

4 Q And you believed that person with a gun had on either
5 a black or a blue ski mask?

6 A Yes, sir.

7 Q Thank you. That's all I have.

8 THE COURT: Redirect?

9 MR. GOLDBERG: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. GOLDBERG

12 Q Again, Mr. Hisker might have just covered this. The
13 man with the gun was the same man that had part of
14 his face covered?

15 A Yes, sir.

16 Q Thank you.

17 THE COURT: All right, sir. Thank you very
18 much. You may come down. May this witness be
19 excused? Without objection. Next witness.

20 MR. GOLDBERG: The State calls Randy Wigfall.

21 RANDY WIGFALL, after being duly sworn, testifies
22 as follows:

23 THE CLERK: Thank you. Please have a seat in
24 the witness stand and state your full name for the
25 record.

1 WITNESS: My name is Randy Wigfall.

2 DIRECT EXAMINATION

3 BY MR. GOLDBERG

4 Q Mr. Wigfall, how you doing?

5 A Pretty good.

6 Q Do you know why we're here today?

7 A Yes.

8 Q On August 8th, 2005, what were you doing at that time
9 in terms of work?

10 A At 5, 5:00, I usually go open up. That's when the
11 shift has changed. I run the night shift and Ojetta
12 run the day shift.

13 Q Well, let me back up. I'm sorry. When you're not at
14 the apartment, what else are you doing for a living?

15 A I'm a paint and body man.

16 Q A paint and body man? Are you still doing that now?

17 A Yes.

18 Q You live in Columbia still?

19 A Yes.

20 Q How long have you been in Columbia?

21 A Thirty years.

22 Q And how long have you been in the paint and body
23 business?

24 A Well, about -- my youngest son is 20 -- 26 years.

25 Q Twenty-six years. Okay. So back in August though,

Randy Wigfall - Direct by Mr. Goldberg

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1 you were working as a paint and body man?

2 A Mm-hmm (affirmative).

3 Q But you were also --

4 A Operating --

5 Q -- operating a gambling house?

6 A That's correct.

7 Q How long had that been going on?

8 A At that facility, it was right around four to five

9 months.

10 Q And that was at [REDACTED]?

11 A That is correct.

12 Q And what was the apartment number on that?

13 A The apartment number?

14 Q Yeah.

15 A I can't --

16 Q [REDACTED]

17 A I can't recall right now.

18 Q [REDACTED] sound right?

19 A Yeah. That's correct. Close enough.

20 Q And when you say you were operating the gambling

21 house, what exactly did that mean?

22 A In detail, as we had like five or six machines in

23 rooms, when someone hit for 15, \$20, I'd do all the

24 payout. If they hit for \$20, I would pay out. Any

25 time someone gets pay out, I do the pay out.

1 Q You said you usually ran the place at night?

2 A Yes, sir.

3 Q And who ran it during the daytime?

4 A Ojetta.

5 Q Do you know her last name?

6 A Huggins.

7 Q Is that Mr. Walter Huggins' wife?

8 A Walter Huggins' wife. Yes.

9 Q And usually when you have clients playing the
10 machines, what are you doing while they're playing?
11 Where are you? What are you doing?

12 A Usually, if I have about seven or eight people in
13 there playing, I'll walk around, you know, and just
14 check and see if they're playing. If they're playing
15 comfortably on the machines, I'll usually be sitting
16 in the chair where Mr. Greene was sitting at the
17 night he got killed. That's the chair I'd usually
18 sit in.

19 Q Let's go back to State's 99, this little diagram of
20 the apartment. Is that about how the apartment was
21 set up?

22 A Yes.

23 Q Okay. And where did you usually sit?

24 A Right in this area right in here.

25 Q What was there?

Randy Wigfall - Direct by Mr. Goldberg

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- 1 A That's -- well, it's a couch in that area.
- 2 Q That's usually where you were?
- 3 A Yes.
- 4 Q And were you sitting there that night?
- 5 A For a short period.
- 6 Q Who else was sitting there?
- 7 A Mr. Greene was sitting there after I left.
- 8 Q And what was Mr. Greene doing there?
- 9 A He was watching television, was getting ready to
- 10 teach me pinocle.
- 11 Q Who else was there to play pinocle?
- 12 A Walter Huggins and Jerry.
- 13 Q Had you ever played pinocle before?
- 14 A No. But it seemed to be a fun game. They was going
- 15 to teach me how to play.
- 16 Q Do you know who else was in the apartment at the
- 17 time?
- 18 A Yes. Name, I can't remember the names. We had
- 19 several people in there playing.
- 20 Q What were they doing?
- 21 A Playing the machines. About five or six people in
- 22 there playing the machines.
- 23 Q All right. So while you were sitting in the living
- 24 room, what do you remember happening next?
- 25 A I heard a knock at the door and I went and opened the

1 door. I saw the gentleman right across the hall.
2 And earlier that day Mr. Huggins told me the
3 gentleman wanted to sell some VCR's. And to my
4 knowledge, I said, Mr. Huggins, he wants to talk to
5 you. So I just didn't close the door but I had the
6 door cracked and walked back in the back area.

7 After I walked in the back area, I heard several
8 voices say, where is Ojetta, where is Randy. It kind
9 of like stunned me. And they said, give me the
10 money. And that's when I went to the bathroom. And
11 when I went in the bathroom, I went in the closet.
12 After several minutes I heard two gunshots.

13 Q So you opened the door. It was the guy across the
14 hall?

15 A Yes.

16 Q You tell Mr. Huggins it's for him and then you start
17 walking --

18 A I assumed it was for Mr. Huggins.

19 Q You assumed it was for him?

20 A Yeah.

21 Q When you said you started walking back, at that point
22 where --

23 A I think instinct just led me to the back. And I just
24 walked to the back. And after I walked to the back,
25 I heard, you know, give me the money. And then I

Randy Wigfall - Direct by Mr. Goldberg

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1 said, well, you know, it's got to be a robbery. So
2 that's when I went into the bathroom and went into
3 the closet.

4 Q And the names you heard him say again?

5 A Where is Ojetta? Where is Randy?

6 Q How did that make you feel when you heard them say,
7 where is Randy?

8 A Oh. It wasn't a good feeling.

9 Q So where did you go from there? In the bathroom?

10 A Yeah, in the bathroom.

11 Q And what did you do in the bathroom?

12 A I went into a closet and stood and just stayed quiet.

13 Q Did you hear anything else while you were in the
14 bathroom?

15 A Several profanities. They said, give me the money,
16 and that's when I heard a gunshot. And next I heard
17 when Jerry came in the bathroom and he made Jerry
18 take his clothes off. Or he made him strip down
19 rather. I was just in the bathroom myself and he
20 made him strip down.

21 Q Do you know what kind of gun it sounded like?

22 A Yes. It was a shotgun.

23 Q When Jerry came in the bathroom and they made him
24 strip, what happened after that?

25 A I just stayed solid. And I don't think Jerry knew I

1 was in there. And maybe a few minutes passed. I
2 think I had maybe several hundred dollars on me and I
3 just slid the money out to Jerry. I said, Jerry,
4 just give it to them. Maybe they'll leave.

5 Q Did you ever get a look at anybody's face that came
6 in there?

7 A No. Huh-uh (negative).

8 Q Would it be fair to say that it was pretty well known
9 that for those who had came to play the machines that
10 you'd be sitting in that front room and that you were
11 going to be the one with the money?

12 A Yeah. And I would be the one that opened the door.
13 Yes. That's fair.

14 Q Let me ask you about that. When people came over to
15 play, how did that work? Was the door unlocked where
16 people just walked in?

17 A No.

18 Q Or did they knock on the door? How did customers
19 usually get into the apartment?

20 A I would have to open the door. No one just comes and
21 opens the door. I would open the door and let them
22 in. And most people that have come there, I have
23 seen them before. I know them. I have seen them
24 before. So I open the door and let them in.

25 Q And you were the only one that let them in?

Randy Wigfall - Direct by Mr. Goldberg

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- 1 A Yes.
- 2 Q And you had a key to the place?
- 3 A Yes.
- 4 Q And you kept it locked?
- 5 A Yes.
- 6 Q Even when you were there?
- 7 A True.
- 8 Q So was the apartment in your name?
- 9 A No.
- 10 Q But did anyone have consent to come in that apartment
- 11 without you allowing them to?
- 12 A No. No one.
- 13 Q Except for maybe Ojetta?
- 14 A Yes. Only one pass key. From Ojetta to me. When I
- 15 would come on, I'd get it from Ojetta and when I
- 16 leave the next morning, I give it to her.
- 17 Q Okay. And you said you heard gunshots while you were
- 18 in the closet?
- 19 A Yes.
- 20 Q How long do you think you sat in that closet?
- 21 A It seemed like an eternity, but ...
- 22 Q It's hard to say?
- 23 A It's hard to say.
- 24 Q What did you do when you left the closet?
- 25 A Walter, he said, Randy, I've got bad news. They shot

1 Brother Greene. And I went out and walked out of the
2 closet. He was just lying on the floor. That's when
3 I went downstairs and went into my vehicle and leaved
4 (sic) The Reserves. I left and went up the hill and
5 went to a gas station, as I was going I called 911,
6 called the police. And about maybe three to five
7 minutes later Richland County Sheriff came down.
8 That's when I came back to the apartment.
9 Q When you walked out and Mr. Huggins told you that
10 they shot Brother Greene, what did you see as you
11 walked through there?
12 A He was just lying on the floor in a pool of blood.
13 Q Had you known Mr. Greene pretty well before this?
14 A Yes.
15 Q How did you know him?
16 A Orders of Masons brother.
17 Q After you saw him lying there and you walked out, did
18 you notice anything about the apartment across the
19 hall?
20 A Yes. They was in disarray, stuff all over the floor.
21 Q The door was open?
22 A The door was wide open, yes.
23 Q Did you see anyone standing in the doorway?
24 A Yes. I saw Ms. -- the young lady that they beat up,
25 I saw her.

Randy Wigfall - Direct by Mr. Goldberg

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- 1 Q What does she look like?
- 2 A Well, --
- 3 Q White? Black? Tall? Short?
- 4 A She was Hispanic.
- 5 Q She was standing in the doorway?
- 6 A I wouldn't say in the doorway. In her apartment.
- 7 Q Can you describe her demeanor when you saw her?
- 8 A Pardon me?
- 9 Q Can you describe what she was doing or her demeanor?
- 10 A Half her clothes was off and she was crying,
- 11 screaming.
- 12 Q Mr. Wigfall, weren't you actually charged with an
- 13 offense as it relates to the gambling house?
- 14 A Pardon me?
- 15 Q Were you charged with a crime --
- 16 A Yes.
- 17 Q -- for running that gambling house?
- 18 A Yes.
- 19 Q And did you plead guilty to that?
- 20 A Yes.
- 21 Q Is that about a year ago, a year and a half ago?
- 22 A Yes.
- 23 Q Do you know what happened to the money that you
- 24 passed forward to Mr. Gordon?
- 25 A No.

1 Q You just handed it out there and --

2 A I just handed it out to him.

3 Q -- never saw it again?

4 A Yeah. Never saw it again.

5 Q Thank you, sir.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MR. HISKER

9 Q Good afternoon, Mr. Wigfall.

10 A How you doing?

11 Q Fine. How are you?

12 A All right.

13 Q Do you know my client, Mr. Middleton?

14 A No.

15 Q You don't know him on a first name basis?

16 A No.

17 Q There's no question in your mind though that one of
18 the aggressors in the apartment called out, where is
19 Randy?

20 A Someone did. Where is Ojetta? Where is Randy?

21 Q But you didn't get a good look at either of the
22 suspects?

23 A No.

24 Q That's all.

25 THE COURT: Anything further?

Randy Wigfall - Cross by Mr. Hisker

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1 **MR. GOLDBERG:** No, sir.

2 **THE COURT:** You can step down. May this witness
3 be excused? Without objection. Next witness.

4 **MR. GOLDBERG:** The State calls Regina Pinckney.

5 REGINA PINCKNEY, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Thank you. Please have a seat in
8 the witness stand and state your full name for the
9 record.

10 **THE WITNESS:** Yes. Regina Pinckney.

11 DIRECT EXAMINATION

12 **BY MR. GOLDBERG**

13 **Q** Ms. Pinckney, how you doing?

14 **A** Fine. How are you doing?

15 **Q** Good. Do you live in Columbia?

16 **A** Yes, I do.

17 **Q** How long have you been lived here?

18 **A** Forty-six years.

19 **Q** Forty-six years?

20 **A** (Nods head affirmatively).

21 **Q** Are you working?

22 **A** I am disabled.

23 **Q** What kind of work did you used to do?

24 **A** Nursing.

25 **Q** Nursing?

- 1 A (Nods head affirmatively).
- 2 Q And are you married? You got a family?
- 3 A Yeah. I have a family.
- 4 Q How long have you been married?
- 5 A About 16 years.
- 6 Q Are you familiar with the gambling house over at the
7 The Reserves Apartments on Faraway Drive?
- 8 A Yes, I am.
- 9 Q And I just want to make sure you speak up enough so
10 everybody can hear you and the court reporter can
11 hear you. Okay?
- 12 A Okay.
- 13 Q How many times do you think you had been to that
14 apartment before?
- 15 A Probably about four or five times.
- 16 Q And you when there to play the machines?
- 17 A Yes.
- 18 Q Did you go there on August the 8th of 2005?
- 19 A Yes, I did.
- 20 Q Usually when you -- on these four or five times
21 you've been there, did you usually go during the day
22 or at night?
- 23 A The day.
- 24 Q How come you ended up there at night on this day?
- 25 A I wasn't supposed to be there but I just thought I'd

Regina Pinckney - Direct by Mr. Goldberg

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1 just go throw a little dollar before the game come

2 on. I was waiting on the football game.

3 Q Are you a little bit nervous today?

4 A Yes I, am.

5 Q That's all right. Just make sure you speak up so

6 they can hear you.

7 A I've got a voice problem.

8 Q There's some water back there if you need it. So

9 what were you out doing that day before you went to

10 the apartment?

11 A Shopping.

12 Q And what made you go over there?

13 A The devil.

14 Q You were just wanting to go play a few rounds?

15 A Yeah. I just wanted to go play a little bit before

16 the Monday Night Football game come on.

17 Q When you got there what did you do?

18 A I got some change I believe and --

19 Q Who did you get that from?

20 A Randy.

21 Q Okay. Go ahead.

22 A And I just went in the first room and sit down. I

23 started playing, got up and cashed out one time. And

24 then that's when I heard the knock come on the door.

25 And it was just a lot of, bunch of noise, and I heard

- 1 one of them said, where Ojetta, where Randy? And the
2 lady was sitting next to me, and I said, oh, Lord,
3 they must be robbing this place. And I jumped up and
4 jumped in the closet. And I just kept hearing
5 commotion. Then I heard a sound, a loud sound. And
6 then --
- 7 Q Let's slow down and back up a little bit. Okay?
- 8 A Okay.
- 9 Q So you went in the first bedroom you say?
- 10 A Yes. I was in the first bedroom.
- 11 Q State's 99, is that this bedroom here?
- 12 A Yes.
- 13 Q And you were in there playing the machines. And what
14 did you hear?
- 15 A I heard a knock come on the door.
- 16 Q After you heard the knock, what did you hear?
- 17 A Whoever it was that knocked on the door entered the
18 door and they said, where is Ojetta, where is Randy?
- 19 Q And what's the first thing that came into your mind?
- 20 A After they got loud they were robbing the place.
- 21 Q And that's when you jumped in the closet?
- 22 A Yes.
- 23 Q There was a lot of commotion out front?
- 24 A Yes.
- 25 Q Or it sounded that way?

Regina Pinckney - Direct by Mr. Goldberg

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- 1 A Yes.
- 2 Q And did you hear anyone else yelling other demands
3 about money or anything like that?
- 4 A The only person I heard, the only thing I heard they
5 said, where is Ojetta, where is Randy and, everybody
6 get on the floor, where is the money? So that's when
7 I proceeded to say in the closet.
- 8 Q What happened while you were in the closet?
- 9 A The young lady was in the room with me came to the
10 closet with me. And then she said, I might as well
11 get out because they have already seen me.
- 12 Q Did you know her?
- 13 A No. I didn't know her but I had seen her several
14 times.
- 15 Q Playing machines?
- 16 A Yes.
- 17 Q And she said what now?
- 18 A They have already seen me, so I might as well get out
19 the closet.
- 20 Q And did she get out of the closet?
- 21 A She got out.
- 22 Q What happened after that? Did you hear anything?
- 23 A Yes. I heard a sound like somebody was getting hit
24 and they were saying, where is the money, where is
25 the money and I believed to be Mr. Huggins saying he

1 had already gave you everything he have. And then
2 they proceeded to hit him again. And then I heard a
3 gunshot.

4 Q When you said you heard what sounded like someone
5 getting hit, what do you mean by that? What exactly
6 did you hear? What kind of sound did you hear?

7 A Like an object, a metal object. You know, I didn't
8 know what they was hitting, but it just sounded like,
9 you know, ...

10 Q And after that is when you heard someone saying he
11 doesn't have any money, something like that?

12 A He done gave you all he got. And then I heard, I
13 want to say it was Mr. Greene saying, he grabbed the
14 gun, and they said, turn the gun loose, turn the gun
15 loose. And then that's when I heard the shot.

16 Q How many shots did you hear?

17 A I heard two shots.

18 Q What did you -- what happened after that?

19 A I just started praying.

20 Q How long were you in the closet? Do you know?

21 A 'Til everything was over.

22 Q And what happened when you -- do you remember seeing
23 Mr. Gordon anywhere, Mr. Jerry?

24 A Yes. Mr. Jerry was in the room with us.

25 Q Playing the machines?

Regina Pinckney - Direct by Mr. Goldberg

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- 1 A No. He had got up and walked out and then he came
2 back. But he was putting his wallet up on the shelf
3 and then he took it back down. So after that I
4 just --
- 5 Q He was in that room with you?
- 6 A First bedroom.
- 7 Q When you got there, were there people in the front
8 room other than Randy?
- 9 A Yes.
- 10 Q Who was that?
- 11 A Mr. Greene and "Huggie".
- 12 Q And once you came out of, exited the closet, what did
13 you do after that?
- 14 A When I exited the closet, I heard Huggins was saying,
15 calling Randy. And then he said, everybody is gone.
16 So that's when I got out of the closet. And when I
17 came towards the living room, I seen Mr. Huggins with
18 Mr. Greene in his arms. And I walked over and felt
19 his pulse and it was very shallow. And I was like --
- 20 Q When you say shallow, what do you mean?
- 21 A It was -- you couldn't really get a reading on his
22 pulse. And --
- 23 Q Did you see blood anywhere?
- 24 A Yeah. Blood was everywhere. Chairs was turned over.
25 It was just a mess. And I was just shaking. And I

1 heard the lady across the hall screaming and
2 hollering in the doorway asking could someone talk to
3 911 because they couldn't understand what she was
4 saying.

5 Q Can you describe what that lady looked like?

6 A She is like Hispanic I think. So I stepped over some
7 clothes that were in the front of the doorway and
8 went across the hall.

9 Q Were those clothes inside the apartment?

10 A Inside the apartment.

11 Q You stepped over those on the way out?

12 A Yes.

13 Q So you went over to her?

14 A To talk to the 911 operator.

15 Q And what did you tell 911?

16 A I just told them they need to send everybody they got
17 because it has been a shooting, blood everywhere.

18 It's just -- it was just chaos. She asked me could I
19 stay on the phone and I told her I was very scared
20 because I didn't know where they were, would they
21 come back. And she said there should be a unit
22 around the corner and she said, keep looking out the
23 door. I kept looking out the door. And within five
24 minutes I did see the ambulance.

25 Q And you never got a look at anybody's face, did you?

Regina Pinckney - Direct by Mr. Goldberg

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1 A No, I didn't.

2 Q But you heard voices?

3 A Yeah. I just heard --

4 Q Do you remember how many?

5 A Two. Because one said, come on, Tight. The police
6 is coming.

7 Q And then there was also a voice that was yelling
8 demands?

9 A Yes.

10 Q Tell me again what that voice said?

11 A Come on, Tight. The police is coming.

12 Q Is it possible that they said come on, Tank?

13 A It sounded like to me it was Tight.

14 Q Thank you, ma'am.

15 THE COURT: Questions.

16 MR. HISKER: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. HISKER

19 Q Hello, Ms. Pinckney.

20 A How you doing?

21 Q When you were interviewed with the police, they
22 actually showed you what's known as a photo line-up,
23 didn't they?

24 A I believe so.

25 Q And that's an array of six photographs with people's

1 faces?

2 A Yes.

3 Q You actually picked a person out of that line-up not
4 based on what they looked like but based on who you
5 thought their voice was, right?

6 A It sounded like.

7 Q Who it sounded like. Because you thought you had
8 recognized that voice in the past?

9 A Mm-hmm (affirmative).

10 Q And you actually selected somebody on this photo
11 line-up?

12 A That I thought the voice sounded like.

13 Q But it really had nothing to do with the photos?

14 A Nothing to do with it.

15 Q But the police in their investigation showed you a
16 one-page sheet with six photos on it?

17 A Yes.

18 Q Thank you. That's all I have.

19 **THE COURT:** Anything further?

20 REDIRECT EXAMINATION

21 **BY MR. GOLDBERG**

22 Q You never saw anyone's face --

23 A No.

24 Q -- while you were at the apartment, right?

25 A No.

1 Q Thank you.

2 THE COURT: All right. The witness may be
3 excused. You can come down, ma'am. Thank you very
4 much. Counsel, let me see you a minute.

5 (Whereupon, a bench conference is had)

6 THE COURT: All right, ladies and gentlemen.
7 Let's take a short break. Again, don't discuss the
8 case among yourselves while you're in the jury room.
9 Let's just relax for a few minutes and we'll
10 continue. We'll probably run until about 5, 5:30
11 tonight. If that's a problem with anybody, please
12 let me know or let the bailiffs know. We're not
13 going to run much past that, but I just thought I'd
14 sort of give you a little heads up. All right.
15 Let's take a short break.

16 (Jury out at 3:41 p.m.)

17 THE COURT: Let's take up this issue about the
18 photographs. You made a motion in limine that you
19 didn't want to -- I'm not sure which photographs you
20 objected to. I have some up here that are pictures
21 of the defendant in various poses. I'm not sure what
22 else -- I mean, is there anything -- we can do it
23 after the break. But do we need to look at some
24 other photographs other than these?

25 MS. CAMPBELL: Do you object to any others?

1 **MR. HISKER:** I probably need to look through
2 them again, but ...

3 **MS. CAMPBELL:** I'll give them to you over the
4 break.

5 **MR. HISKER:** Okay. But I certainly object to
6 those for the record.

7 **MS. CAMPBELL:** I'm not putting any autopsy
8 pictures in.

9 **MR. HISKER:** No. I saw the ones you had. But I
10 certainly object to those.

11 **THE COURT:** All of them?

12 **MR. HISKER:** Especially the ones with blowup
13 tattoos. I don't know what the point of any of them
14 are.

15 **MS. CAMPBELL:** It's to show the scratches and
16 stuff on his arms. That's the reason they
17 photographed it. It's consistent with what had
18 happened two days before when they captured him.

19 **THE COURT:** Well, let's take it up later. And
20 they may not be ...

21 **MR. HISKER:** Can I get those? I just want to
22 take a look at those.

23 **THE COURT:** They've already been marked?

24 (Whereupon, a break is taken)

25

1 (WHEREUPON, State's Exhibit No. 112 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 113 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 114 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 115 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 116 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 117 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 118 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 119 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 120 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 121 is marked
20 for identification.)

21 (WHEREUPON, State's Exhibit No. 122 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 123 is marked
24 for identification.)

25 **THE COURT:** Counsel, the security tells me they

1 need to leave with Mr. Middleton at 5:00. If you
2 leave at 5:00 --

3 *DEPUTY:* We've got to be down there by 5.

4 *MS. CAMPBELL:* Okay.

5 *THE COURT:* Is there any problem with that? Any
6 problem with that?

7 *MS. CAMPBELL:* No, sir.

8 *THE COURT:* I also have a juror. I've got a
9 note here somewhere. The juror has to leave by 5.
10 So we'll accommodate the juror and the jail. Ready
11 for the jury?

12 *MS. CAMPBELL:* The State's ready.

13 *MR. HISKER:* The defense is ready.

14 *THE COURT:* Bring the jury, please.

15 (Jury in at 4:00 p.m.)

16 *THE BAILIFF:* The jury is all present, Your
17 Honor.

18 *THE COURT:* All right. Thank you. Juror 88.
19 Okay. We're going to try to accommodate you. Juror
20 88 is requesting to leave at 5. That will give us a
21 good hour. So we'll continue and break at 5 today
22 and we'll just see how tomorrow goes. Thank you very
23 much. All right. Solicitor, call your next witness.

24 *MS. CAMPBELL:* May it please the Court? The
25 State calls Investigator Bill Mann.

1 WILLIAM MANN, after being duly sworn, testifies
2 as follows:

3 (WHEREUPON, State's Exhibit No. 124 is marked
4 for identification.)

5 THE CLERK: Thank you. Please have a seat on
6 the witness stand and state your full name for the
7 record.

8 WITNESS: My name is William Mann.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL

11 Q Investigator Mann, where are you employed?

12 A Richland County Sheriff's Department.

13 Q And what do you do there, sir?

14 A Work in the crime scene lab.

15 Q Can you tell the jury a little bit about your
16 education and your training in crime scene
17 investigation?

18 A I started in crime scene in February of '92, multiple
19 seminars that have been provided, training at
20 Criminal Justice Academy, in-house training in
21 multiple disciplines: Fingerprinting, photography,
22 evidence collection, crime scene processing.

23 Q Have you been qualified before as an expert in crime
24 scene investigation?

25 A Yes, I have.

1 Q On multiple occasions?

2 A Yes.

3 MS. CAMPBELL: Your Honor, at this time we'd
4 offer him as an expert as a crime scene investigator.

5 THE COURT: Any objection or Voir Dire?

6 MR. HISKER: No, Your Honor. No Voir Dire.

7 THE COURT: All right.

8 Q I want to turn your attention back to August the 8th
9 of 2005. Did you have an occasion to respond to a
10 call at The Reserves Apartments that night?

11 A Yes, I did.

12 Q And what time were you dispatched to go out to The
13 Reserves?

14 A Give me a second. It looks like it was around 9:00
15 at night.

16 Q And what kind of call were you responding to?

17 A It was a shooting, if I remember correctly.

18 Q Which apartment did you initially respond to?

19 A [REDACTED] [REDACTED] [REDACTED].

20 Q And was the scene secured when you got there?

21 A Yes, it was.

22 Q Prior to processing the scene, did you get anyone to
23 brief you about the surrounding facts involving this
24 shooting?

25 A Yes, I did.

William Mann - Direct. by Ms. Campbell

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- 1 Q And who did that, sir?
- 2 A It would have been the lead officer on the scene.
- 3 And I spoke with Sergeant Tessier.
- 4 Q Okay. And was the apartment, [REDACTED] was that located
- 5 on the second floor of the apartment building?
- 6 A Yes, it was.
- 7 Q Did you note anything from the exterior of the
- 8 apartment building that caught your attention?
- 9 A The screen of one of the apartments was out and
- 10 laying down on the shrubbery.
- 11 Q And what was the condition of the shrubbery
- 12 underneath the screen?
- 13 A It had been mashed down.
- 14 Q Once you went up on the second floor, what did you
- 15 observe as you approached the apartment, [REDACTED]?
- 16 A That the door was partially open.
- 17 Q Once inside what did you observe?
- 18 A The deceased victim was lying on his back covered
- 19 with a blue disposable sheet.
- 20 Q Were you aware that EMS had already been there before
- 21 you?
- 22 A Yes. I believe I'd been briefed on that.
- 23 Q Prior to making entry into the apartment, [REDACTED], was
- 24 there a search warrant that some people went and got?
- 25 A I waited for a search warrant to be obtained prior to

1 entering the scene.

2 Q Did you also make any observations about the doorway
3 leading into the apartment across the hallway which
4 is [REDACTED]?

5 A The apartment, [REDACTED], the front door was forced open.
6 A consent to search was obtained from Eliana Garcia.

7 Q And when you say the front door was forced open, how
8 could you tell?

9 A The door frame was damaged. The door was split at
10 the deadbolt area.

11 Q Did you make any observations about Ms. Garcia
12 herself?

13 A She had some red marks on her forehead. Her left eye
14 area was red and swollen.

15 Q And I show you State's Exhibits 108, 109 and 110.
16 Are those photographs you actually took of Ms. Garcia
17 that night?

18 A Yes, they are.

19 Q Once the search warrant was brought to the scene, did
20 you then make entry into the [REDACTED] apartment?

21 A Yes, we did.

22 Q And did you make any observations when you removed
23 the blue sheet from over Mr. Greene?

24 A There was blood on the carpet under part of the
25 deceased's body. The cushions were on the floor.

William Mann - Direct by Ms. Campbell

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1 Q And that was in and around the area where Mr.
2 Greene's body was?

3 A Yes, it is.

4 Q And I'm going to show you what's already into
5 evidence as State's Exhibit No. 7; in addition show
6 you State's Exhibit No. 15 and 27. Do you recognize
7 those two?

8 A Yes, I do. That would be the deceased laying under
9 the sheet, a second picture of the same from a
10 different angle.

11 Q And is that the condition the apartment was when you
12 got there that night to process this crime scene?

13 A Yes, it is.

14 Q Along with State's Exhibit No. 7?

15 A Yes.

16 MS. CAMPBELL: Your Honor, at this time we'd
17 offer 15 and 27 into evidence, I believe without
18 objection.

19 MR. HISKER: No objection.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibit No. 15 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 27 is admitted
24 into evidence.)

25 Q And again, as you're walking into the apartment, what

1 area was the body actually located?

2 A As you step into the apartment through the door, it
3 would be over to the right.

4 Q Permission to publish?

5 THE COURT: Yes, ma'am.

6 Q Thank you. As you walked into the doorway area --
7 when you process a crime scene, tell this jury
8 generally how you do it and what items you are going
9 to photograph?

10 A The first thing you do when you step up to the
11 entranceway is look at it, pay close attention to the
12 details in it, take a few minutes and just observe
13 it. Then you take your camera. In my case I was
14 using a digital camera. And you start photographing.
15 I start at the doorway and work my way all the way
16 around the room before I enter it.

17 And then we go back after we have photographed
18 the principal items and we use markers, either
19 alphabetical or numbered markers. And then we
20 photograph it again referencing where stuff is in the
21 room and what items are. And then a scene diagram
22 for orientation purpose is drawn so you can lay the
23 photos down with the orientation, and you've got a
24 full -- I don't know if panoramic would be the right
25 word to use -- view of the whole thing along with

1 where things are in the room and their relationship
2 to each other. And then after you do that you would
3 start collecting your items, depending on what the
4 item is, how it would be packaged.

5 Q Starting at the doorway, did you notice certain
6 items? I need to re-mark these.

7 (WHEREUPON, State's Exhibit No. 125 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 126 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 127 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 128 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 129 is marked
16 for identification.)

17 Q I'm going to show you what's now been marked as
18 State's Exhibits 125 through 129, first ask you just
19 to look at those.

20 A Okay.

21 Q And were those photographs you took at the entrance
22 to Apartment [REDACTED] that night?

23 A Yes, they are.

24 MS. CAMPBELL: Your Honor, at this time we'd
25 offer them into evidence.

1 **MR. HISKER:** No objection.

2 **THE COURT:** Without objection.

3 (WHEREUPON, State's Exhibit No. 125 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 126 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 127 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 128 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 129 is admitted
12 into evidence.)

13 **Q** And showing you State's Exhibit No. 129, do you
14 recognize that?

15 **A** I do. It's just inside the apartment door, [REDACTED].

16 **Q** And I show you State's Exhibit No. 100. Is that the
17 actual medallion that's shown there in the entrance?

18 **A** Yes, it is.

19 **Q** And on that medallion, is there a picture?

20 **A** Yes, it is. It's of a little girl.

21 **Q** So what's depicted in the doorway or the entranceway
22 of the apartment is the medallion in State's 100?

23 **A** Yes.

24 **Q** And that's how it was when you got there that night?

25 **A** That's correct.

William Mann - Direct by Ms. Campbell

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1 Q State's Exhibit No. 127 and 128, what do those show?

2 A That's standing in the apartment looking back toward
3 the hallway of [REDACTED].

4 Q And does that show some additional items that you
5 collected that night?

6 A Yes, it does.

7 Q I show you what's already in evidence as State's
8 Exhibit 101. Is that item depicted -- actually this
9 item is State's Exhibit No. 125. What is that?

10 A It's going to be a piece of clasp or chain necklace
11 type.

12 Q That could attach something like this to a necklace?

13 A It could attach to that initial E there.

14 Q And that's where you found that that night when you
15 were processing that apartment. Is that correct?

16 A Yes.

17 Q And State's Exhibit No. 101, that's the actual item
18 you collected marked number 3. Is that correct?

19 A Correct.

20 Q Going on into the interior of the apartment, I'm
21 going to show you what's been marked as State's
22 Exhibit No. 6 which is already in evidence. Do you
23 recognize that?

24 A Yes, I do. That's inside the apartment. As you step
25 in the door, it would be to your left.

1 Q So if I'm walking into that apartment, it's over to
2 my left?

3 A Correct.

4 Q And what items are depicted in State's Exhibit No. 6?

5 A It would be the table over to the left, and I believe
6 it's some chairs there that possibly are -- yes,
7 they're turned over.

8 Q And was there any evidence --

9 A And the table upside down.

10 Q Was there any evidence from this area that you
11 collected that's not really too apparent in this
12 picture but if you look hard you can see it?

13 A Yes. Between the table upside down and the chair by
14 the folding table there's a dark place or a damaged
15 place on the carpet, that would be where --

16 Q I'm sorry. You collected certain evidence from
17 underneath the carpet?

18 A Yes, I did. And that --

19 Q I show you what's yet to be marked.

20 A Yes. That one --

21 Q And where is it on this picture, if I can point to
22 it?

23 A It's the discolored place there where the carpet
24 appears to be damaged.

25 Q And in fact when you first processed this apartment,

- 1 did you immediately notice that?
- 2 **A** No.
- 3 **Q** And what in fact did that turn out to be underneath
- 4 that carpeting right there?
- 5 **A** The wadding cup and some of a shot from a shotgun
- 6 shell.
- 7 **Q** And if you were to put this in perspective for the
- 8 jury, if you walked in and Mr. Greene's body is to
- 9 the right, is this across to the left?
- 10 **A** Yes, it would be. Kind of catty-cornered, angled.
- 11 **Q** And the item that you have in your hand, is this in
- 12 fact the wadding that you collected from the
- 13 apartment?
- 14 **A** Yes, it is.
- 15 **Q** Underneath the carpet?
- 16 **MS. CAMPBELL:** Your Honor, at this time we'd
- 17 offer it into evidence, the wadding.
- 18 **MR. HISKER:** No objection.
- 19 **THE COURT:** Without objection.
- 20 (WHEREUPON, State's Exhibit No. 130 is marked
- 21 for identification and received in evidence.)
- 22 **Q** And in fact you have it diagrammed on there where the
- 23 hole in the floor was?
- 24 **A** Yes, I do.
- 25 **Q** And those numbers represent inches from the wall?

- 1 **A** Correct.
- 2 **Q** You'd better pull that out.
- 3 **A** Okay. If you took a shotgun shell and cut it apart,
4 you'd find this inside of it. It's the shot cup that
5 these little pellets sit in. A gun is fired, all
6 this separates as it comes out of a gun. At close
7 range this is dangerous.
- 8 **Q** Obviously. And these little pellets weren't in this
9 little -- you put them in this little container just
10 for clarification. Is that correct?
- 11 **A** Correct. When firearms got through with it, they
12 probably put it in there I guess.
- 13 **Q** Okay. Continuing around the room, did you note any
14 large areas of blood and blood spatter?
- 15 **A** Yes.
- 16 **Q** I'm going to show you some photographs that are
17 already into evidence, State's Exhibits No. 8, 10 and
18 9. First of all, do you recognize those?
- 19 **A** Yes, I do.
- 20 **Q** And what do those depict?
- 21 **A** Areas of blood on the front of the kitchen counter,
22 dining room side, a little closer up, and on the
23 floor also.
- 24 **Q** And where in relation to the body was that blood
25 actually found?

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1 A The body would be to the left -- correction -- to the
2 right. And the kitchen and dining area is over to
3 the left.

4 Q Okay. And were you made aware that night that one of
5 the victims had suffered a severe head cut?

6 A I don't remember if I was or not.

7 Q Would this be consistent with someone suffering from
8 a head cut?

9 A Yes.

10 Q And do head cuts tend to bleed a lot?

11 A Yes.

12 Q I'm going to show you what's already in evidence,
13 State's Exhibit No. 8. Does that show also an area
14 of the room over to the left side?

15 A Yes, it does.

16 Q And in fact I think you can see the corner of that
17 table right here as you're facing the kitchen. So it
18 would be immediately all the way to the left past
19 where the short table was turned over. Is that
20 correct?

21 A That's correct. And that is also a little closer up
22 of the -- in the carpet.

23 Q In the carpet where you recovered that shotgun (sic)?

24 A That's correct.

25 Q In relation to that, did you mark so it would be

1 easier to see in State's Exhibit 18 and 17 some of
2 the blood spatter on the carpet there?

3 A Yes, I did. These numbers are just reference, the
4 locations of the blood, and later the swabs of the
5 blood are numbered the same way.

6 MS. CAMPBELL: Your Honor, at this time we'd
7 offer State's Exhibits 17 and 18.

8 MR. HISKER: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 17 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 18 is admitted
13 into evidence.)

14 Q And in fact those -- did you notice anything on the
15 ceiling? I show you State's Exhibit No. 22 and 20.
16 What is that?

17 A There is some points of blood spatter on the ceiling.

18 MS. CAMPBELL: Your Honor, at this time we'd
19 offer 20 and 22.

20 MR. HISKER: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 20 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 22 is admitted
25 into evidence.)

1 Q And in fact in 20 which is a little further away, you
2 can actually see where the wall meets the ceiling
3 right there?

4 A That's correct.

5 Q And then 22 would be a closer up view of that blood
6 spatter. And again, was that in the area over where
7 all the blood was away from the body?

8 A Yes.

9 Q You also noted in your report that there was some
10 clothing found. Is that correct?

11 A Correct.

12 Q And where was it found in the apartment?

13 A Just inside the door a little bit.

14 Q I'm going to show you what's already into evidence as
15 State's Exhibit No. 13 and State's Exhibit No. 14.
16 What are the items shown on there?

17 A It's a pair of khaki shorts and a piece of white
18 clothing. I can't see it that good. And a red
19 shirt.

20 Q Do you know what that item is?

21 A Crack pipe.

22 Q And was that how those items were found when you were
23 processing the apartment that night?

24 A Yes.

25 Q Did you identify during the course of your

1 investigation that night who the clothing belonged
2 to?

3 A Yes, I did.

4 Q Were there also some glasses found nearby there, too?

5 A Yes, there were.

6 Q And what if anything did you do with the glasses as
7 well as the clothing that you found that night?

8 A I believe I returned it back to the lady that owned
9 them.

10 Q And was that the lady that lived across the hall that
11 you had photographed earlier, her injuries?

12 A Yes. I believe her name is Eliana Garcia.

13 Q Garcia. I'm going to show you some additional
14 photographs of two chairs, State's Exhibit 24 and 23.
15 Do you recognize those?

16 A These are close ups of the chairs that were laying in
17 the floor. They're dented.

18 Q And you thought that was significant? They were
19 dented?

20 A Yes.

21 MS. CAMPBELL: Your Honor, at this time we'd
22 offer 23 and 24 into evidence.

23 MR. HISKER: No objection.

24 THE COURT: Without objection.

25

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1 (WHEREUPON, State's Exhibit No. 23 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 24 is admitted
4 into evidence.)

5 Q When you say they are dented, what part are you
6 talking about is actually dented in them?

7 A The seat back, the vertical part.

8 Q Am I pointing to it?

9 A You are.

10 Q And in this one, what part is actually dented?

11 A The same, seat back.

12 Q When you continued into the apartment, did you move
13 into the hallway and bedroom areas?

14 A Yes, I did.

15 Q I'm going to show you what's been marked as State's
16 Exhibit No. 28. Do you recognize that?

17 A That's going to be looking down the hallway. Number
18 5 would be the first bedroom on your right. Number 6
19 would be the second bedroom on the right. I believe
20 Number 7 goes into the bathroom.

21 Q And those numbers, you just put those numbers there
22 so you could actually see where the entranceways were
23 through the hallway?

24 A Correct.

25 MS. CAMPBELL: Your Honor, at this time we'd

1 offer State's Exhibit 28, without objection.

2 MR. HISKER: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit No. 28 is admitted
5 into evidence.)

6 Q In one of the bedrooms, did you note anything
7 significant? You testified earlier you noted that
8 one of the screens was pushed out and the bushes were
9 messed up?

10 A Correct.

11 Q Did you then go and examine that windowsill?

12 A Yes, I did.

13 Q I'm going to show you State's Exhibit 25 and 26. Do
14 you recognize those?

15 A That's scuff marks in the dust that would be on the
16 windowsill itself, and that's looking out the window
17 to the ground below.

18 MS. CAMPBELL: Your Honor, at this time --

19 A And that's the window that the screen was missing
20 from.

21 Q Okay. And once you observed there -- Your Honor,
22 we'd offer 26 and 25 into evidence, without
23 objection.

24 MR. HISKER: Without objection.

25 THE COURT: Without objection.

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1 (WHEREUPON, State's Exhibit No. 25 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 26 is admitted
4 into evidence.)

5 Q What you observed there in State's Exhibit No. 25,
6 was that consistent with some kind of shoe print?

7 A Yes.

8 Q Is it good enough to make a comparison, or can you
9 just say it's some kind of shoe print?

10 A Some kind of shoe print.

11 Q And that came from what's shown in State's Exhibit
12 No. 26, correct?

13 A Yes.

14 Q You mentioned there was a bathroom I believe?

15 A Yes.

16 Q Going off the left down the hallway?

17 A Correct.

18 Q I'm going to show you what's been marked as State's
19 Exhibit 41 and 42. First of all, do you recognize
20 those?

21 A Yes, I do.

22 Q And what are those?

23 A It's the bathtub with a cooler sitting in it and a
24 padlock laying on the edge of the tub. And number --
25 the second one is the cooler opened showing different

1 kind of beverages.

2 MS. CAMPBELL: Your Honor, at this time we'd
3 offer State's Exhibit 41 and 42.

4 MR. HISKER: No objection.

5 (WHEREUPON, State's Exhibit No. 41 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 42 is admitted
8 into evidence.)

9 Q Beg the Court's indulgence. In the back bedrooms,
10 did you see any unusual -- well, not unusual --
11 gaming machines?

12 A I observed gaming machines in both bedrooms.

13 Q And I show you State's Exhibits 74 through 77. Do
14 you recognize those?

15 A A folding table with two video gaming machines, a
16 folding table showing two video gaming machines and a
17 folding -- two folding tables with a total of five
18 video gaming machines and chairs to sit on.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer those into evidence.

21 MR. HISKER: No objection.

22 (WHEREUPON, State's Exhibit No. 74 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 75 is admitted
25 into evidence.)

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1 (WHEREUPON, State's Exhibit No. 76 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 77 is admitted
4 into evidence.)

5 (131 and 132)

6 (WHEREUPON, State's Exhibit No. 131 is marked
7 for identification.)

8 (WHEREUPON, State's Exhibit No. 132 is marked
9 for identification.)

10 Q I want to show you what's been marked as State's
11 Exhibit 131 and 132. You mentioned earlier that when
12 you first got there you noticed that the apartment
13 across from it, [REDACTED], the door had been forced open?

14 A Correct.

15 Q I'm going to show you those two photographs, sir. Do
16 you recognize those?

17 A Yes, I do.

18 Q And ...

19 A The door is split right along at the deadbolt on the
20 edge of the door, and the door has been processed for
21 fingerprints.

22 Q And I was just getting ready to ask you about that.
23 I notice that there is a kind of blue, almost gray
24 colored film on the door. Who did that?

25 A Without reading, I'm not sure who actually used the

1 processing.

2 Q Well, how would that have gotten there, I guess would
3 be my next question?

4 A It's a chemical called amido black and it was sprayed
5 on there.

6 Q It was sprayed on there?

7 A Mm-hmm (affirmative).

8 Q And the purpose of that is to try to get what?

9 A It develops fingerprints that are in blood or the
10 make up of the blood. Like you get it on your
11 fingers, maybe the print doesn't show real good
12 because it's not real visible with the blood. But if
13 you spray that, the amido black reacts with the blood
14 and produces the fingerprint, makes it visible.

15 MS. CAMPBELL: Your Honor, at this time we'd
16 offer State's Exhibit 131 and 132.

17 MR. HISKER: No objection.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit No. 131 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 132 is admitted
22 into evidence.)

23 Q And I note on 132 there are some darker spots. Would
24 that be a possible fingerprint?

25 A The ones up high would be, and down below could be

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1 where it's been touched multiple times.

2 Q And whenever you go to a crime, you want to try to
3 process for fingerprints. Is that correct?

4 A Yes.

5 Q Are you always going to be able to or even often
6 going to be able to get what's called a usable latent
7 print from a crime scene?

8 A No.

9 Q And explain that to the jury, especially in a high
10 traffic area?

11 A First of all, what leaves the fingerprint, the ridge
12 lines on your fingers is what it's outlining. It's
13 the oils in the skin that leave the print when you
14 touch something. However, if your hand moves, as it
15 touches, it will leave a smeared print or a partial
16 print. And an area that has been touched over and
17 over, you can try this on glass at home, just keep
18 touching it like that and it will be a build up and
19 finally the print detail will not be there any more
20 but the build up of the oils will. So that would
21 cause you not to get a usable print.

22 Q And in this case did you process the crime scene at
23 ■ and ■ that night for fingerprints?

24 A I am not sure if I did the fingerprinting or not. I
25 have to read.

1 Q Were there multiple people at this crime scene?

2 A There had been.

3 Q And including Investigator Trish Collins?

4 A Yes.

5 Q And were different people doing different things that
6 night?

7 A Yes.

8 Q And your main thing was to photograph and collect
9 evidence from the crime scene?

10 A That was one of my main duties. Yes. That would
11 cover it.

12 Q Okay. One final piece of evidence I want to talk
13 about, then we're going to put in some physical
14 evidence, is, I want to show you what's not been
15 marked. Did you find any evidence of any type of
16 shooting there at the scene in addition to the
17 wadding that you found across the room from the
18 victim's body?

19 A Yes.

20 Q And what did you find near the victim's body?

21 (WHEREUPON, State's Exhibit No. 133 is marked
22 for identification.)

23 A I believe there was a shotgun shell there.

24 Q And I'm going to show you what's been marked as
25 State's Exhibit No. 133. First, do you recognize

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1 that?

2 A Yes.

3 Q And what does that show?

4 A It's a Winchester 12-gauge shotgun shell that's been
5 fired.

6 Q And can you explain to the jury how a fired shotgun
7 shell gets at a crime scene typically?

8 A It comes out of the gun that fired it.

9 Q And would that be consistent with a shotgun having
10 been shot in that apartment that night at least one
11 time?

12 A Yes, it would.

13 Q Where was that located?

14 A This shotgun shell was on the end of the -- to the
15 right couch. It was about 46 inches out from the
16 back wall of the living room and about 36 inches in
17 from what would be the wall on the parking lot side
18 to the right of the door as you come in.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer it into evidence.

21 MR. HISKER: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit No. 133 is admitted
24 into evidence.)

25 Q In addition to photographing the crime scene, did you

1 also collect certain evidence?

2 A Yes, I did.

3 Q And did you find in fact some glasses located
4 underneath the love seat in the living room?

5 A I know there was a pair just at the entrance in the
6 doorway, just inside.

7 Q And those were returned to their owner, Ms. Garcia?

8 A Correct.

9 Q In addition to that, I show you this item, first ask
10 do you recognize it?

11 A Yes. I collected this. Those glasses were under the
12 love seat. They're marked G and they're evidence
13 item WM10.

14 Q And in addition to that, as depicted in one of the
15 photographs, as you walked in the door, you also
16 collected the clasp?

17 A Yes.

18 Q And finally, were there also some game cards located
19 at a couch?

20 A Correct.

21 Q And those were items you collected that night?

22 A Yes.

23 MS. CAMPBELL: Your Honor, at this time we'd
24 offer them into evidence.

25 MR. HISKER: No objection.

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1 A Do you want it opened?

2 Q No. It doesn't need to be opened.

3 (WHEREUPON, State's Exhibit No. 134 is marked
4 for identification and received in evidence.)

5 (WHEREUPON, State's Exhibit No. 135 is marked
6 for identification and received in evidence.)

7 (WHEREUPON, State's Exhibit No. 136 is marked
8 for identification and received in evidence.)

9 Q That night while you were on the scene, did you also
10 do a rough diagram of the crime scene?

11 A Yes, I did.

12 Q I'm going to show you what's been blown up and marked
13 as State's Exhibit No. 124. Do you recognize that?

14 A Yes, I do.

15 Q Is that a drawing you drew in relation to all this?

16 A Yes.

17 MS. CAMPBELL: Your Honor, at this time we'd
18 offer it into evidence. And we will stipulate it's
19 not to scale.

20 A No.

21 MR. HISKER: I have no objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit No. 124 is admitted
24 into evidence.)

25 Q Basically in this diagram, without you having to get

- 1 down, does this basically just show where certain
2 items were located as you walked in?
- 3 A Yes. It's for orientation purposes.
- 4 Q And again, the folding table is located here?
- 5 A Correct.
- 6 Q And this, what is this?
- 7 A Upside down coffee table in the floor.
- 8 Q What's this?
- 9 A It's a love seat.
- 10 Q And where was the body actually located?
- 11 A Right there where the stick man is drawn.
- 12 Q These items in here, what were these?
- 13 A The CP is the crack pipe. The BC is the blue chair.
14 3 and 4 are -- 3 is the E medallion. 4 is the pair
15 of glasses that belonged to Eliana. 1 and 2 would be
16 the gold medallion and the gold clasp.
- 17 Q The blood that looks like it's in front of the
18 kitchen, where is that located on here?
- 19 A It would be there where it says countertop on this
20 side of the kitchen counter. The other side would be
21 the kitchen itself.
- 22 Q And this doesn't depict all the back bedrooms, does
23 it?
- 24 A No.
- 25 Q Did you also assist Investigator Collins in

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- 1 processing of a green truck?
- 2 A Yes, I did.
- 3 Q And when did you do that, sir?
- 4 A The green pick-up truck?
- 5 Q Yes, sir.
- 6 A Was done on August the 10th.
- 7 Q And where did you actually process that truck?
- 8 A In the forensics garage at headquarters.
- 9 Q And how did the truck get to the forensics garage at
- 10 the headquarters?
- 11 A It was towed by a towing service.
- 12 Q And is that normal procedure when you want to process
- 13 a vehicle?
- 14 A Yes. It's brought in by a towing service.
- 15 Q When you first observed the truck, did you make any
- 16 observations as far as the tag went?
- 17 A Yes. The tag on it was [REDACTED] [REDACTED] [REDACTED],
- 18 [REDACTED]. And they ran that tag and it came back a
- 19 stolen tag.
- 20 Q Did it even belong to that truck?
- 21 A No.
- 22 Q And assisting in -- what were your observations of
- 23 the interior of the truck as far as collecting
- 24 certain items from it?
- 25 A Observations were it was a green Sierra pick-up, the

1 tag I just mentioned. The tag is stolen and does not
2 belong. The truck, several wallets, assorted I.D.'s
3 and papers in the front passenger's seat and the
4 floor. There was khaki colored tote suitcase with
5 wheels on the back seat.

6 Q Okay. Let me --

7 A Also --

8 Q Go ahead.

9 A Also multicolored Hawaiian towel or Hawaii towel and
10 a gray foot locker and double X shirt were on the
11 back seat of the truck. In the cargo bed a pair of
12 white leather classic LTT shoes, a full 12-ounce Bud
13 beer, a 20-ounce open Gatorade Frost Freeze, a spent
14 Winchester 12-gauge shell, and a walking cane.

15 Q And where was the shell located?

16 A The shell ...

17 (WHEREUPON, State's Exhibit No. 137 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 138 is marked
20 for identification.)

21 Q I show you this item. Do you recognize that?

22 A It was by the left rear wheel well in the back of the
23 truck.

24 Q Okay. And when you say in the back of the truck, was
25 this a pick-up truck?

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1 A Pick-up truck, truck bed.

2 Q So that would have been in the truck bed?

3 A Mm-hmm (affirmative).

4 Q And you mentioned also that you found -- well, let me
5 start back. Let me have that back for a minute. You
6 mentioned some certain identification or items that
7 you found in the front seat, including a couple of
8 wallets and some I.D.?

9 A Correct.

10 Q I show you what's been marked as State's Exhibit 138.
11 Is this the stuff you collected that night?

12 A Yes.

13 Q And the items in my hand are the items you actually
14 collected from the front seat of the green pick-up?

15 A Century 21 card, Suggs & Kelly, AARP, assorted cards,
16 South Carolina I.D.

17 Q Who did those cards belong to?

18 A I believe they belonged to James Greene.

19 Q Thank you. I show you what's been marked -- Your
20 Honor, at this time we'd offer State's Exhibit 138.
21 And we'll go ahead and offer 137. Without objection?

22 MR. HISKER: No objection.

23 THE COURT: And 138.

24 MR. HISKER: No objection.

25

1 (WHEREUPON, State's Exhibit No. 137 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 138 is admitted
4 into evidence.)

5 Q Are those items you also collected from the interior
6 of the truck when you processed it?

7 A Yes.

8 Q And what are those items, sir?

9 A Assorted pictures, game cards. Just assorted
10 pictures and papers.

11 Q And who did those belong to?

12 (WHEREUPON, State's Exhibit No. 139 is marked
13 for identification.)

14 (WHEREUPON, State's Exhibit No. 140 is marked
15 for identification.)

16 (WHEREUPON, State's Exhibit No. 141 is marked
17 for identification.)

18 Q If you're able to identify them?

19 A I don't think it's got it on the I.D. unless it would
20 be on the photos.

21 Q And in fact these wallets don't have anything in
22 them?

23 A No.

24 Q I show you what's been marked as State's Exhibit
25 Nos. 139 through 141. Does that show how it appeared

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1 before you collected those items?

2 **A** Yes, it does.

3 **Q** And that would be the interior of the green truck
4 that had been towed from the scene. Is that correct?

5 **A** Correct.

6 **Q** You mentioned that a Duckhead tote bag was in the
7 back, I believe on the back seat?

8 **A** Duckhead rolling tote. It was on the back seat.

9 (WHEREUPON, State's Exhibit No. 142 is marked
10 for identification.)

11 **Q** I show you what's been marked as State's Exhibit 142.
12 Is that in fact the tote you collected from that back
13 seat?

14 **A** Yes, it is.

15 **MS. CAMPBELL:** Your Honor, we'd offer 142 into
16 evidence.

17 **MR. HISKER:** No objection.

18 **THE COURT:** Without objection.

19 (WHEREUPON, State's Exhibit No. 142 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 143 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 144 is marked
24 for identification.)

25 **Q** Once you collected that bag, did you then look at the

1 interior? I show you what's been marked as State's
2 Exhibit 88.

3 A Yes, I did.

4 Q And what items did you find in the interior?

5 A There is four live shotgun shells and a black and
6 yellow handled screwdriver.

7 Q And I show you State's Exhibit No. 143. Your Honor,
8 at this time we'd offer both 88 and 143 into
9 evidence.

10 MR. HISKER: No objection.

11 THE COURT: No objection.

12 (WHEREUPON, State's Exhibit No. 88 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 143 is admitted
15 into evidence.)

16 Q Are these in fact the live rounds you found?

17 A Yes, they are.

18 Q As depicted in 88. And how many of them were there?

19 A Four.

20 Q You mentioned a spent shell casing you found in the
21 bed of the truck. Is that correct?

22 A Correct.

23 Q I show you what's been marked as State's Exhibit 144.
24 Do you recognize that?

25 A Yes.

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1 Q Is that the spent shell casing?

2 A I'm sure it is.

3 Q It makes it's easier to open it on the other end.

4 A Spent 12-gauge shell casing, fired.

5 MS. CAMPBELL: Your Honor, at this time we'd
6 offer the spent shell casing into evidence.

7 MR. HISKER: No objection.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit No. 144 is admitted
10 into evidence.)

11 Q And the spent shell casing that was found from the
12 wheel well of that car, how does it compare to the
13 spent shell casing that you found at the scene, just
14 visually?

15 A Visually, the same color, same brand.

16 Q Who else was also processing that truck with you?

17 A I believe Investigator Trish Collins was.

18 Q Once you collected various items that you've already
19 mentioned, some of which are in evidence and some of
20 which are not, did you make an attempt to process
21 them for fingerprints?

22 A I am sure I did. Examined, processed the following
23 items: A Lacrosse Turaco wallet, papers, pictures,
24 black billfold, note pad, assorted I.D.'s belonging
25 to James Greene, deceased, a black bifold wallet with

1 assorted I.D.'s and papers belonging to Eliana Garcia
2 and Dennis A. Novus, assorted I.D.'s belonging to
3 Walter Huggins, spent 12-gauge shell, unopened
4 Budweiser 12 ounce can, opened Gatorade, Frosty
5 Freeze, Stanley black and yellow screwdriver, four
6 live Winchester 12-gauge shells, and a walking cane.

7 Q I show you what's been marked as State's Exhibits 45,
8 46 and 47. Are those some of the items also
9 collected from the front seat of the car?

10 A Yes, they are.

11 MS. CAMPBELL: Your Honor, at this time we'd
12 offer them into evidence.

13 MR. HISKER: No objection.

14 (WHEREUPON, State's Exhibit No. 45 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 46 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 47 is admitted
19 into evidence.)

20 Q And, again, who did those identifications belong to?

21 A One of them belonged to Jerry James Gordon.

22 Q Mm-hmm (affirmative).

23 A James Greene.

24 (WHEREUPON, State's Exhibit No. 145 is marked
25 for identification.)

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1 A A chief Constable for Richland County which I think
2 would be out of Public Works.

3 (WHEREUPON, State's Exhibit No. 146 is marked
4 for identification.)

5 Q Once you had processed this truck, did you also
6 collect the tag off of it, the stolen tag?

7 A Yes. It was placed into evidence.

8 Q And I show you what's been marked as State's Exhibit
9 No. 146. Do you recognize that?

10 A Yes. That's the tag.

11 Q Is that the tag?

12 A Yes, it is.

13 Q One other item that was taken from the truck or the
14 back of I guess the bed of the truck was a walking
15 cane?

16 A Yes.

17 Q And that was also an item you processed?

18 A Yes.

19 Q And when you processed all these items, were you able
20 to find any usable, identifiable prints?

21 A No identifiable prints were located.

22 Q And is that unusual?

23 A No.

24 Q And what is the nature of that? Why is that true?

25 A Basically, like I stated before, the way you handle

1 it, whether something slides through your hands or
2 you've got a firm grip on it, all of that goes into
3 whether a usable print, identifiable print is
4 developed and lifted.

5 Q And in high traffic areas, if people touch the same
6 place over and over again, does that inhibit your
7 ability to get a print?

8 A Yes. As they'll either be just a dark place or
9 they'll contain little or no ridge detail that's
10 usable.

11 Q And finally I've heard the term "smudge" used when
12 referring to fingerprints that are not usable; what
13 does that mean?

14 A Smudge would be like your hand slid, smudged,
15 smeared.

16 Q Okay. State's Exhibit No. 145, is this the cane you
17 collected?

18 A Yes, it is.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 offer it into evidence.

21 **MR. HISKER:** No objection.

22 **THE COURT:** Without objection.

23 (WHEREUPON, State's Exhibit No. 145 is admitted
24 into evidence.)

25 Q And did you know that that cane belonged to the

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1 victim in the case, James Greene?

2 A Yes.

3 Q As far as any fingerprint comparisons that were done
4 in this case, were those done by Investigator
5 Collins?

6 A They would have been.

7 MS. CAMPBELL: Beg the Court's indulgence. Just
8 a couple more, Your Honor.

9 (WHEREUPON, State's Exhibit No. 147 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 148 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 149 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 150 is marked
16 for identification.)

17 Q Finally, State's Exhibits 147 through 150, can you
18 look at those, sir?

19 A It would be inside the back seat. That shows the
20 rolling tote. It shows the assorted items on the
21 floor. It shows a shotgun shell laying in the back
22 of the truck by the left rear wheel well and shows
23 the walking cane also in the same location.

24 MS. CAMPBELL: Your Honor, at this time I'd
25 offer actually 146 through 150.

1 **MR. HISKER:** No objection.

2 (WHEREUPON, State's Exhibit No. 146 is admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 147 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 148 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 149 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 150 is admitted
11 into evidence.)

12 **Q** State's Exhibit 148, what does that depict?

13 **A** That's I.D.'s and et cetera laying in the floor of
14 the truck.

15 **Q** State's Exhibit No. 147, what does that show?

16 **A** That's the Duckhead bag, this one right here, laying
17 in the back seat on the driver's side.

18 **Q** Finally State's Exhibit No. 150 and 149?

19 **A** That's the bed of the truck and that's over toward
20 the left wheel well, the cane and the shell.

21 **Q** Thank you. That's all I have.

22 **THE COURT:** Let me see you.

23 **MR. HISKER:** It's probably going to be brief.

24 **THE COURT:** Go ahead. Wait a second. Where is
25 security? Jessie?

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1 (Whereupon, a bench conference is had between
2 the Court and the deputy)

3 **THE COURT:** Go ahead.

4 CROSS EXAMINATION

5 **BY MR. HISKER**

6 **Q** Good afternoon, Investigator Mann.

7 **A** Good evening, sir.

8 **Q** As an expert in crime scene investigation, you're
9 familiar with blood spatter?

10 **A** Yes.

11 **Q** And could you tell the jury how blood would get
12 somewhere on a ceiling?

13 **A** Well, after someone is struck multiple times, the
14 blood begins to get on the item that they're being
15 struck with; and as you're swinging it, it starts
16 coming off of it.

17 **Q** It's sort of like a slinging?

18 **A** It slings it off.

19 **Q** And there is also a phenomenon with firearms known as
20 blowback. Is that correct?

21 **A** Correct.

22 **Q** You're familiar with blowback?

23 **A** Yes.

24 **Q** Could you explain to the jury what happens when
25 somebody is shot with a weapon such as a shotgun?

1 A There is blowback; but it's going to be coming from
2 further down the barrel. I mean, the barrel is
3 longer, so it's going to be coming back. If you've
4 ever seen a firearm fired in low light conditions,
5 you can see the envelope of flame and smoke coming
6 out of it, and that would be the blowback.

7 Q But it also produces microscopic blood particles that
8 a cloud of blood particles could go out, too. Is
9 that correct?

10 A As it hits a person or a living thing, you know,
11 there can be.

12 Q And that goes -- not only does it go forward away
13 from the gun, it also comes back towards the shooter.

14 A It could.

15 Q But that's a very common --

16 A Depending on how close together they are, the
17 distance between one and the other.

18 Q Well, for example, a contact wound; you would expect
19 to see blood blow back towards the shooter because
20 they're in very close proximity?

21 A Possibly.

22 Q Well, you'd agree that's a common phenomenon?

23 A It's possible. And it can be depending on clothing
24 between that and the flesh.

25 Q So this blood evidence sometimes gets on walls and on

1 other people through ways of blowback and being slung
2 off another object?

3 A Possibly.

4 Q Now, you also collected some hairs found on the four
5 shell casings, didn't you?

6 A Yes, sir.

7 Q And you submitted those to DNA?

8 A Correct.

9 Q Thank you. That's all I have.

10 THE COURT: Anything further?

11 MS. CAMPBELL: No, sir.

12 THE COURT: All right. Thank you very much,
13 sir. You may come down. May this witness be
14 excused?

15 WITNESS: Thank you, sir.

16 THE COURT: Without objection. All right,
17 ladies and gentlemen. That will conclude the
18 testimony for today. I'm going to excuse you now for
19 the evening. I hope you'll have a pleasant evening.
20 I'll instruct you again not to discuss the case with
21 anyone else over the evening hours or among
22 yourselves when you return to the jury room in the
23 morning.

24 I'm going to ask you to be back in the jury room
25 at 10:00 in the morning. We've got several other

1 matters that need to be taken care of that don't
2 involve this trial. That are set to begin at 9:00
3 here at the courthouse that I have to attend to. So
4 I anticipate those matters will be concluded by 10.
5 We'll resume the trial at that time. I hope you have
6 a pleasant evening. We'll see you at 10:00 tomorrow
7 morning.

8 (Jury out at 5:00 p.m.)

9 **THE COURT:** We'll stand at ease until 10:00 in
10 the morning.

11 (Whereupon, the proceedings are concluded for
12 the day, to be reconvened tomorrow morning)

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1 Wednesday, August 29, 2007

2 (WHEREUPON, State's Exhibit No. 151 is marked
3 for identification.)

4 (WHEREUPON, State's Exhibit No. 152 is marked
5 for identification.)

6 (WHEREUPON, State's Exhibit No. 153 is marked
7 for identification.)

8 (WHEREUPON, State's Exhibit No. 154 is marked
9 for identification.)

10 (WHEREUPON, State's Exhibit No. 155 is marked
11 for identification.)

12 (WHEREUPON, State's Exhibit No. 156 is marked
13 for identification.)

14 (WHEREUPON, State's Exhibit No. 157 is marked
15 for identification.)

16 (WHEREUPON, State's Exhibit No. 158 is marked
17 for identification.)

18 (WHEREUPON, State's Exhibit No. 159 is marked
19 for identification.)

20 (WHEREUPON, State's Exhibit No. 160 is marked
21 for identification.)

22 (WHEREUPON, State's Exhibit No. 161 is marked
23 for identification.)

24 (WHEREUPON, State's Exhibit No. 162 is marked
25 for identification.)

1 (WHEREUPON, State's Exhibit No. 163 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 164 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 165 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 166 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 167 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 168 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 169 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 170 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 171 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 172 is marked
20 for identification.)

21 (WHEREUPON, State's Exhibit No. 173 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 174 is marked
24 for identification.)
25

1 (WHEREUPON, State's Exhibit No. 175 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 176 is marked
4 for identification.)

5 MS. CAMPBELL: Your Honor, he was objecting to
6 some photos that I'm just going to withdraw.

7 THE COURT: All right. Fine.

8 MS. CAMPBELL: For the record, when they did a
9 search warrant where the defendant was staying --

10 THE COURT: Just hold on. Did you get this?

11 COURT REPORTER: Yes, sir.

12 THE COURT: All right, Ms. Campbell.

13 MS. CAMPBELL: When they did a search warrant
14 where the defendant was arrested and where he had
15 been staying, they did find a bowl with I think 11
16 marijuana cigarette butts. I guess it's -- I don't
17 know what you call them.

18 MR. GOLDBERG: Roaches.

19 MS. CAMPBELL: And we are not going to introduce
20 that.

21 THE COURT: Thank you.

22 MR. HISKER: Or the analysis.

23 THE COURT: Or the analysis.

24 MS. CAMPBELL: Or the analysis.

25 THE COURT: He's not charged with that. All

1 right. Anything further before we bring the jury?

2 **MR. HISKER:** The defense is ready.

3 **THE COURT:** The State is ready to proceed?

4 **MS. CAMPBELL:** The State's ready.

5 **THE COURT:** Bring the jury, please.

6 (Jury in at 11:03 a.m.)

7 **THE BAILIFF:** Your Honor, the jury is present.

8 **THE COURT:** Thank you very much. Good morning,
9 ladies and gentlemen. Let me first apologize to you
10 for the delay. I told you there were some other
11 matters that needed to be attended to before we
12 started at 9. Unfortunately, things don't always run
13 on time and especially when you're dealing with a lot
14 of people. So I do want to take this opportunity to
15 apologize for the delay. However, at this time we're
16 ready to continue with the trial. Solicitor, call
17 your next witness.

18 **MS. CAMPBELL:** May it please the Court. The
19 State calls Jessica Ramos.

20 **JESSICA L. RAMOS,** after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** Thank you. Please have a seat in
23 the witness stand and state your full name for the
24 record.

25 **WITNESS:** My name is Jessica Lynn Ramos.

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DIRECT EXAMINATION

BY MS. CAMPBELL

Q Okay. You will have to talk into the microphone because sometimes it's hard to hear in here. Okay?

A Okay.

Q What's your name again?

A Jessica Lynn Ramos.

Q And, Jessica, how old are you?

A Twenty-one.

Q And do you live here in the Columbia area?

A Not any more.

Q Where do you live?

A In Elgin.

Q I want to turn your attention back two years ago to August the 8th of 2005. Are you familiar with an apartment complex on Faraway Drive?

A Yes, ma'am.

Q And were you there on August the 8th?

A I was in the trailer park beside the apartment building.

Q Okay. And what were you doing at the trailer park beside the apartment building?

A Dropping off my friend.

Q Dropping off your friend?

A Mm-hmm (affirmative).

1 Q And do you remember approximately what time of night
2 it was you were doing that?

3 A I know it was dark. I'm not sure just what time of
4 night.

5 Q Once you had dropped off your friend, did you observe
6 anything that you later reported to the police?

7 A Yes. I seen a man run out of the woods haven't and
8 jump into the back of a truck.

9 Q Can you say that again a little bit louder?

10 A I saw a man run out of the woods and jump into the
11 back of a pick-up truck.

12 Q And when you say he ran out of the woods, what part
13 of the woods? Where was it?

14 A It was on the side of the road that I was on.

15 Q And you were in the trailer park right next to the
16 apartment complex?

17 A I was leaving out of the trailer park.

18 Q So were you actually in your car at that point?

19 A Mm-hmm (affirmative).

20 Q And you said he came out of the woods. Was it from
21 the wooded area near the apartment complex or near
22 the trailer park?

23 A Near the trailer park.

24 Q And what about that caught your attention?

25 A There were a lot of cops at the apartments and me and

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- 1 my friend had ridden down there before I dropped her
2 off to see what was going on. And we knew they were
3 looking for someone.
- 4 Q So when you saw the man run of the woods, what did he
5 do?
- 6 A He dove into the bed of the pick-up truck.
- 7 Q Do you remember what color the pick-up truck was?
- 8 A I believe it was blue and white.
- 9 Q When you saw that happen, did he have anything with
10 him?
- 11 A He had a bag. It looked kind of like a book bag but
12 I couldn't tell. He slung it before he jumped in the
13 truck. He slung it into the truck first.
- 14 Q What did the truck do? And how did -- was the truck
15 moving when he jumped in it?
- 16 A It had slowed down. He was in front of me. The
17 truck was in front of me. And he slowed down. And
18 the guy dove in kind of while it was still rolling.
- 19 Q But he had thrown his book bag in first?
- 20 A Mm-hmm (affirmative).
- 21 Q And once he dove in, what happened to the truck?
- 22 A They went down the road and I was behind them and he
23 kept looking up at me.
- 24 Q And who kept looking up at you?
- 25 A The guy in the back of the truck.

1 Q Was there just one man that you saw dive into the
2 truck?
3 A Yes, ma'am.
4 Q And could you tell whether he was young or old?
5 A I couldn't really tell.
6 Q Could you tell anything about him other than it was a
7 man?
8 A I could tell he was a black man and he had short hair
9 from him looking at me.
10 Q You said he kept looking at you. How did that
11 happen? Tell the jury. Explain that to them.
12 A He was laying in the bed of the truck and he kept
13 poking his head up and looking to see if anybody was
14 following him.
15 Q And how long would he poke his head up for?
16 A He would just leave it up for a few seconds and just
17 look around and sit back down.
18 Q And how long did you follow the truck?
19 A To the end of the road, and then I didn't see him.
20 Q And what road were you all on when you were following
21 the truck?
22 A Faraway.
23 Q Faraway? And Faraway actually goes down into Decker.
24 Is that correct?
25 A Mm-hmm (affirmative).

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- 1 Q And were they going that direction or the other
2 direction?
- 3 A They we were heading toward Alpine.
- 4 Q How long did you follow the truck?
- 5 A I made a left onto Alpine and they made a right.
- 6 Q They made a right?
- 7 A Mm-hmm (affirmative).
- 8 Q While you were following the truck, did you notice
9 the license plate?
- 10 A I did.
- 11 Q And did you in fact write it down?
- 12 A Yes, ma'am.
- 13 Q I want to show you this statement. Did you give a
14 statement back shortly after this happened?
- 15 A Yes, ma'am. That night I gave the statement.
- 16 Q Okay. And do you recall or does this refresh your
17 memory as to what the license number was of the truck
18 you observed the man jump into with his backpack?
- 19 A Yes, ma'am.
- 20 Q And what was that number?
- 21 A [REDACTED] [REDACTED]. Sorry.
- 22 Q I'm sorry. Can you repeat that? [REDACTED]
- 23 A [REDACTED]
- 24 Q Stop there. I can't remember any more than three at
25 a time. [REDACTED]?

1 A [REDACTED]

2 Q And what was the purpose in you writing that down
3 that night?

4 A I was going to take it back to the cops.

5 Q And did you do that?

6 A Yes, ma'am.

7 Q And did you actually make contact with the cops that
8 were there at the apartment complex where you saw all
9 the other cops?

10 A Yes, ma'am.

11 Q And did you turn that information over to them and
12 tell them about what you'd seen?

13 A Yes, ma'am.

14 Q Do you know anything about else about what happened
15 that night?

16 A I found out later somebody was killed.

17 Q But at that point you just knew that it was
18 suspicious and you thought you ought to cooperate?

19 A Yes, ma'am.

20 Q And so once you turned on Alpine Road, did you turn
21 back around and go back and tell the police?

22 A Yes, ma'am. I waited a little while. I didn't want
23 them to think I was turning around.

24 Q You didn't want who to think what?

25 A The man in the truck, I didn't want them to know that

1 I was turning around.

2 Q So you drove for a little bit and then went back?

3 A Yes, ma'am.

4 Q Thank you. Please answer any questions the defense
5 may have.

6 THE COURT: Questions?

7 MR. HISKER: No questions, Your Honor.

8 THE COURT: You may come down, ma'am. Thank you
9 very much. This witness free to go? Witness be
10 excused? Without objection. Ma'am, you're free to
11 go. Thank you very much.

12 WITNESS: Thank you.

13 THE COURT: Witness.

14 MR. GOLDBERG: The State calls Anita Thompson.

15 ANITA W. THOMPSON, after being duly sworn,
16 testifies as follows:

17 THE CLERK: Thank you. Please have a seat in
18 the witness stand and state your full name for the
19 record.

20 WITNESS: My name is Anita Walker Thompson.

21 DIRECT EXAMINATION

22 BY MR. GOLDBERG

23 Q Ms. Thompson, where are you from?

24 A I was born in Columbia.

25 Q You lived in the Columbia area your whole life?

1 A No.

2 Q Tell us a little bit about where you've been and what
3 you've done?

4 A You sure? Okay. My dad lived 32 years in the
5 military. I'm from Alaska to Nebraska. I promised I
6 wouldn't marry a soldier but I did. So that's 20
7 more years from Alaska to Nebraska. So ten years ago
8 he returned and I returned to Columbia with my
9 parents.

10 Q For about the last ten years?

11 A Yes.

12 Q And what part of town do you live in?

13 A Forest Acres.

14 Q Forest Acres. And turning your attention back to
15 August 8th of 2005, were you familiar with the
16 apartment, the gambling house over there on Faraway
17 Drive?

18 A Yes, I was.

19 Q In The Reserves?

20 A Yes.

21 Q How many times had you been to that apartment before?

22 A Sometimes I'd go there twice a day because that's
23 where I used to pick up my workers. I own in my own
24 administrative service and I work for a realtor that
25 gets people to put signs down and do a lot of work,

Anita W. Thompson - Direct by Mr. Goldberg

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1 yard work, this, that and the other. And a lot of
2 those guys did a lot of work. So I would pick them
3 up there and drop them off because most of them don't
4 have cars and stuff.

5 Q And did you also play the poker machines while you
6 were there sometimes?

7 A I was there waiting on two guys to tell them I would
8 pick them up at 6:30 that morning, and they weren't
9 there. So I played until they got there.

10 Q On this particular night, on the 8th, that's what you
11 were doing?

12 A Yeah. 7:15. Mm-hmm (affirmative).

13 Q Okay. And how long had you been there before all the
14 commotion started?

15 A Well, I was there. I got there about 7:15 because I
16 was trying to get to Lowe's to also to get the
17 equipment I needed. So when I picked them up, we'd
18 be going straight to Chapin. And I started talking
19 with Mr. Huggins about a house. And he wanted me to
20 take him see to house that Mr. Allen had available.
21 And, however, I wouldn't do that because his wife
22 wasn't there; and, you know, I try not to get in that
23 kind of situation. So we made arrangements for the
24 next day. I would meet him and his wife so they
25 could go and see the house. So that is what I was

1 actually doing, talking to Mr. Huggins.

2 Q Okay. And at some point later did you go back into
3 the bedroom and start playing?

4 A Well, I was back there then talking with Mr. Huggins.

5 Q While you were playing the machines?

6 A Mm-hmm (affirmative).

7 Q And tell us what happened while you were back there
8 playing the machines?

9 A Well, --

10 Q Did you hear some noise out in the front room?

11 A I first heard some noise out in the front area. So I
12 grabbed my purse. I said, well, somebody has lost
13 their money and mad; let me get out of here. So when
14 I stood up with my purse and turned to the door to
15 leave it out of the bedroom, that's when a young man
16 just put the shotgun in my face and said, B, sit
17 down, give me this, give me that. I mean, court may
18 not be like TV but this was. I mean, all kinds of
19 just ugly stuff and just -- and I was really scared
20 because this particular young man did not have
21 anything on his face, a bandanna, nothing.

22 Q Do you remember what the gun looked like? Was it
23 little? Big?

24 A All of them big to me, sir, because I don't deal with
25 guns. But it was a rifle and it was -- you know,

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1 when he put it in my face, I was actively looking at
2 the barrel.

3 Q Once he pointed that gun at your face, what did he
4 say again? He was demanding things from you?

5 A Yeah. He started saying, give me this. He took my
6 watch. He took my ring. He took my earrings. He
7 took my purse. He took my keys to my truck. As a
8 matter of fact, he took everybody's keys in there to
9 all the vehicles. Give me those cigarettes. I gave
10 him mine. There were some Newports sitting on the
11 thing where the machines was. I gave him those, too.
12 And he told me to lay on the floor, and I did that.

13 Q And when you laid on the floor, where did he go?

14 A He went back into the front area.

15 Q And what did you do once he walked out of the room?

16 A Well, I started looking at that little window
17 wondering if I could get this big body through it.
18 And I said I'd better not try that. I might get
19 stuck. And if I open the window there might be a
20 screen there, just thinking all kind of things
21 because you couldn't get out of there unless you go
22 past them.

23 So I decided to get in the closet. I saw this
24 closet. When I got there in there, there was a lady
25 already in there. And I didn't stay in the closet

1 because I knew he had seen me. And if he had come
2 back and I wasn't there, he would look further and
3 he'd probably hurt both of us. So I got back out and
4 got under the table where the machines was and on my
5 knees and prayed.

6 Q While you were doing this, while you were going from
7 the floor to the closet and then back out under the
8 table, what you did you hear coming from the other
9 room?

10 A Oh. I even crawled out into the hallway. And when
11 you crawl into the hallway there's a little
12 kitchenette area. I looked to the side there. They
13 were taking that gun and just beating this man. All
14 I could hear him saying was, I don't have no money.
15 I gave you all I got. And they he kept calling him
16 Randy. And as a matter of fact, when I left out of
17 there I thought Randy was dead. He never said he
18 wasn't Randy. And they were just beating him. And I
19 could hear, when I got back in there, I heard a
20 gunshot.

21 Q A gunshot?

22 A Mm-hmm (affirmative).

23 Q Did you ever encounter Mr. Gordon during all this?

24 A Mr. Gordon, I didn't know anybody by the name of --
25 from seeing and hearing, Mr. Gordon was sitting to

1 the right of me, and that other little lady that was
2 in the closet, she was sitting to the left.

3 Q Okay. And at some point did Mr. Gordon get -- left
4 out of the room you were in?

5 A Yeah. He left the room. It seemed like he was
6 telling me he had to go to the bathroom or something,
7 and he left out of the room.

8 Q You said you had hid under the table for a little
9 while and then you saw the man getting beat with the
10 chair and you heard a gunshot. After that did you
11 leave? What did you do?

12 A Well, even before that there was little lady in
13 there. She was Hispanic. And she was so upset she
14 was talking but she was speaking in her native tongue
15 so I couldn't tell you what she was saying. And
16 after the gunshot it kind of got quiet. We could
17 hear people talking. And then I got up and walked to
18 the front. And all these people was in there. I
19 just could see all this blood and these people were
20 standing around this body. I left. I was the only
21 one to leave.

22 When I got in the hall I could hear in the
23 apartment across there, I didn't know if I was so
24 upset I was still hearing it or was it actually going
25 on. Somebody was over there like torturing those

1 people, just all kind of curse words and give me this
2 and just, you know, all this kind of stuff. So I
3 went down the stairs not thinking my keys were with
4 them to get in my truck to leave.

5 And two young men approached me and said, B,
6 which one of these vehicles is yours or which one of
7 these cars are yours? And at that time I said, well,
8 if they get me now, they're going to have to shoot me
9 in the back and I started running. I ran from
10 apartment to apartment building. They got in a green
11 truck and just followed me and just did doughnuts in
12 front of each apartment building that I was standing
13 in. And I was knocking on doors. Nobody wouldn't
14 let me in of course.

15 And then I ran to run under this 18-wheeler.
16 Well, if I could see under there, I figured they
17 could, too. And I couldn't get out the neighborhood
18 because they just kept, you know, doing doughnuts.
19 Then they went up a hill and the truck got stuck.
20 There was a lady and her son coming from Wal-Mart.
21 And I said, ma'am, please give me a ride. If you
22 don't, I can understand, because I'm not sure I would
23 give you one. And she gave me a ride out of the
24 neighborhood. And I went then and called my husband
25 and son.

Anita W. Thompson - Direct by Mr. Goldberg

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1 Q Let me ask you about back in the apartment when the
2 man came in and pointed the gun at you. Can you
3 describe him at all in terms of height or anything
4 like that?

5 A Let's see. I couldn't compare either the shorter one
6 or the taller one because I never saw both together.
7 But he was darker complected. He had on, if I'm not
8 mistaken, a red -- I think the kids call it dew rags.
9 He had on big clothing because he brought the gun
10 from like under. I don't know if it was a coat or a
11 big sweater, whatever; but he brought the gun from
12 under his clothing.

13 Q Is it fair to say though that when he pointed that
14 gun at you you were scared?

15 A Oh, yeah. When he pointed that gun, he was seven
16 feet tall, this big. I mean, you know, that's all I
17 could see, is the gun.

18 Q And at some point later did an investigator from the
19 Sheriff's Department come and show you a photographic
20 line-up --

21 A Yes. He came to Chapin.

22 Q -- of possible suspects?

23 A Mm-hmm (affirmative).

24 Q Were you able to identify anybody?

25 A No. For once in my life I can truly say I would love

1 to identify him. I couldn't pick him.

2 Q Thank you, ma'am.

3 THE COURT: Yes, sir. Cross examination.

4 CROSS EXAMINATION

5 BY MR. HISKEE

6 Q Good morning, Ms. Thompson.

7 A Good morning.

8 Q You recall when you were interviewed with the police?

9 A Mm-hmm (affirmative).

10 Q You initially told the police that three guys with
11 long shotguns came in?

12 A Mm-hmm (affirmative).

13 Q So it was your belief that there were multiple
14 weapons involved?

15 A Exactly.

16 Q And you saw the three individuals each with a shotgun
17 at the same time?

18 A I saw the one guy that came and put the gun on me.
19 And then when I was crawling and I looked in the
20 living room area, this other guy was taking a gun,
21 beating on Mr. Greene, you know, beating on that man.
22 I didn't know it was Mr. Greene at the time. With
23 the butt of it. So, you know, I assumed there was
24 more. If that guy is back there with me and there is
25 nobody in the front with a gun and Mr. Huggins and

1 them could take him without a gun, he had to have a
2 weapon in the front or something like that. They
3 could have gotten away if the gun was back there.
4 You know, you've got two bedrooms back there. So, I
5 don't know.

6 And again, when I left out of the building, out
7 of the apartment across the hall there was a guy that
8 was, you know, just cursing and carrying on with
9 those people over there and making them get down.
10 And then there were two guys that was chasing me in
11 the truck down there and told me, B, which one of
12 these cars are yours?

13 Q And you -- I mean, this was a scary experience for
14 you?

15 A Sure it was. This is scary. I've never been here,
16 you know. Yeah.

17 Q And it all happened very fast?

18 A I can say very fast now, but at the time it seemed
19 like 30 days, 30 minutes, 30 -- you know, it seemed
20 like a long time between the police getting there and
21 what actually happened.

22 Q But you'd agree that under that stress your
23 perceptions of things could be a little cloudy?

24 A Yeah.

25 Q But you distinctly recall at that time seeing three

1 individuals with guns?

2 A I believe there was three people there. Mm-hmm
3 (affirmative).

4 Q And you testified on direct that the young man who
5 pointed the gun in your face was a dark skinned
6 individual?

7 A He was a dark colored faced. Mm-hmm (affirmative).

8 Q And I mean, you are clear about dark skinned as
9 opposed to light skinned?

10 A You may not be, sir, but I'm very clear with it.

11 Q And you also believe that he had on a gray or a blue
12 t-shirt. Is that correct?

13 A A big t-shirt, big t-shirt with some kind of probably
14 school logo or something, you know, writing on it. I
15 don't know, but one of those big old t-shirts, yes.

16 Q But you're certain it was not a red basketball
17 jersey?

18 A I'm not certain about anything. This was two years
19 ago, you know. And I would see his face every night
20 and I prayed to get that out of my -- you know. So I
21 wouldn't even know if I could recognize him now.

22 Q But you agree at the time you told the police you
23 believed it was gray or blue?

24 A Right.

25 Q Certainly not red?

Anita W. Thompson - Cross by Mr. Hisker

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1 A I don't think it was red.

2 Q That's all I have. Thank you.

3 A Thank you.

4 THE COURT: Redirect?

5 MR. GOLDBERG: No, sir.

6 THE COURT: All right. Ma'am, you may come
7 down. Thank you very much. You're free to go. Next
8 witness.

9 MR. GOLDBERG: The State calls Investigator
10 Ellis.

11 MATT ELLIS, after being duly sworn, testifies as
12 follows:

13 THE CLERK: Thank you. Please have a seat in
14 the witness stand and state your full name for the
15 record.

16 WITNESS: Matt Ellis.

17 DIRECT EXAMINATION

18 BY MR. GOLDBERG

19 Q Investigator Ellis, where are you employed?

20 A Richland County Sheriff's Department.

21 Q How long have you been with the department?

22 A About seven years.

23 Q And what are your duties with the Sheriff's
24 Department?

25 A I work investigations.

1 Q Tell us a little bit about what that is?

2 A After police reports are made, criminal incidents,
3 they're sent up to investigations. We're assigned
4 those cases. We follow up on them, statements from
5 witnesses, victims. At that point we try to
6 apprehend suspects.

7 Q And back on August the 8th of 2005, were you working
8 in that same capacity?

9 A I was.

10 Q Did you hear a call go out in response to an incident
11 at Faraway Drive?

12 A I did.

13 Q And what did you know about that incident?

14 A Dispatch put out a call for shots being fired at The
15 Reserves Apartments at [REDACTED]. They put
16 out Apartment [REDACTED]. So I started to respond to that
17 call.

18 Q And while you were in route did you make contact with
19 any other officers from the Sheriff's Department?

20 A Several officers had arrived prior to me getting
21 there, and they advised me that they had been into
22 the apartment and that they found the victim inside
23 the apartment was waiting on the EMS to come in.
24 They couldn't find any sign of life of the
25 individual.

Matt Ellis - Direct by Mr. Goldberg

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1 Q When you arrived at the scene what did you do?

2 A When I arrived on the scene I located the apartment.
3 The officers had already been in and done a sweep or
4 a clearing of the apartment to make sure there's no
5 other victims or suspects inside of the residence.
6 They were already outside the apartment when I got
7 there. It was on the second level. So when I came
8 up they were standing outside the door. They advised
9 me that they had already done that. I never went in.
10 That apartment was secured until the supervisor who
11 is Sergeant Ewing could be notified of the incident,
12 what we had. At that point in time --

13 Q Deputy Payne?

14 A Corporal Payne.

15 Q I'm sorry. Go ahead.

16 A Corporal Payne was in the process of going to secure
17 the outside perimeter area of the location. He asked
18 me what I wanted done, and I asked him to go ahead
19 and secure the entire building to include the parking
20 lot in case there was any kind of evidence that might
21 need to be collected on the outside of the vehicle
22 also.

23 Q When you say secured the scene, does that involve
24 putting up like crime scene tape?

25 A Yes. They had yellow tape with black writing. It

1 says: Do not enter - police line. I believe that's
2 what it says. And they put that around along the
3 outside perimeter. And then we have somebody stand
4 out with what we call a crime scene log which
5 indicates anybody that comes into that scene, date
6 and time and who it is.

7 Q What if anything did you observe about the building
8 itself when you first walked up to it?

9 A Going back before I made the initial contact, when I
10 was walking up actually looking for the building
11 numbers and stuff, I found it. And the second story
12 building window, I could see a frame from a window
13 appeared to be pushed out. And as I walked by, just
14 naturally looked down and saw that the bushes below
15 that window appeared to have been smooshed or broken
16 apart. And there appeared to be some kind of a night
17 shoe or some type of little shoe in the bushes.

18 Q Slipper?

19 A Slipper I believe. Yeah. I just kind of notated
20 that and moved on up to where the other officers
21 were.

22 Q And taking you back upstairs, when you were looking
23 into the door of the apartment, you said you never
24 entered. Is that right?

25 A I never went inside the apartment.

Matt Ellis - Direct by Mr. Goldberg

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1 Q What did you observe when you looked into the
2 apartment?

3 A I looked in. I could see the victim lying on the
4 floor. You could see a bloody area to his shirt kind
5 of under his arm. You could tell it was what
6 appeared to be a male. If you're looking into the
7 apartment door, he would have been to the right
8 towards the window that would overlook the parking
9 lot. I believe the TV and some couches were in the
10 general area of him. Some cushions I think were
11 thrown about or were on the floor.

12 And as I kind of just looked through from the
13 door, there was what appeared to be from my
14 observation a blood type smear or marking near the
15 bar area I believe which was near the kitchen. And
16 like I said, I never went in. It was secured for the
17 crime scene processing to arrive so no evidence would
18 be disturbed.

19 Q Did you say that Investigator Ewing was the on-call
20 supervisor at the time?

21 A He was.

22 Q And did you eventually contact him and let him know
23 what you had found?

24 A I contacted him and notified him of the situation. I
25 believe he was already in route. He'd already heard

1 the calls. So upon his arrival I briefed him on
2 everything that I knew at that point in time, asked
3 him what he needed me to do. He advised that we were
4 going to need to obtain a search warrant to process
5 the apartment and asked me would I handle that. So I
6 responded back to our office, prepared the affidavit
7 for the search warrant and --

8 Q Were you able to obtain a search warrant?

9 A I was.

10 Q And what did you do with it once you got it?

11 A Once the judge signed it, I responded back to the
12 apartment complex, notified Investigator Bill Mann
13 who was the person in the crime scene unit that the
14 search warrant had been signed and gave him the copy.
15 Then we left the apartment after processing.

16 Q Thank you, sir. That's all I have.

17 MR. HISKER: No questions, Your Honor.

18 THE COURT: Yes, sir. You may come down. Thank
19 you very much. May the witness be excused? Without
20 objection. Next witness.

21 MS. CAMPBELL: May it please the Court. The
22 State calls Trish Collins.

23 TRISHA COLLINS, after being duly sworn,
24 testifies as follows:

25 THE CLERK: Thank you. Please have a seat in

Matt Ellis - Direct by Mr. Goldberg

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1 the witness stand and state your full name for the
2 record.

3 **WITNESS:** Trisha Collins.

4 (WHEREUPON, State's Exhibit No. 177 is marked
5 for identification.)

6 (WHEREUPON, State's Exhibit No. 178 is marked
7 for identification.)

8 (WHEREUPON, State's Exhibit No. 179 is marked
9 for identification.)

10 DIRECT EXAMINATION

11 **BY MS. CAMPBELL**

12 **Q** Investigator Collins, where are you employed?

13 **A** At the Richland County Sheriff's Department.

14 **Q** And what do you do there?

15 **A** I am a crime scene investigator and a latent print
16 analyst.

17 **Q** Tell this jury a little bit about your education and
18 your training in those fields?

19 **A** I have a degree in criminal justice from the
20 University of South Carolina. In addition, I went to
21 the South Carolina Criminal Justice Academy and I was
22 certified as a class one officer. I attended many
23 classes on crime scene investigation, basic crime
24 scene investigation, basic I.D. tech, development of
25 latent fingerprints, comparison of latent

1 fingerprints, development of latent fingerprints on
2 skin, forensic ridgeology, basic palm prints, and in
3 addition to an in-house training program that I
4 completed when I began in the lab.

5 Q Have you been qualified before as an expert in crime
6 scene investigation as well as latent print
7 comparison?

8 A I have.

9 MS. CAMPBELL: Your Honor, at this time we'd
10 offer her as an expert in those areas.

11 MR. HISKER: I stipulate.

12 THE COURT: Okay.

13 Q I want to turn your attention back to the murder that
14 occurred at The Reserves on August the 8th of 2005.
15 When did you first become involved in that case?

16 A I was actually serving as the lab's on-call
17 supervisor that night. And I was then called and
18 notified by Investigator Mann that there had been a
19 shooting where the victim had died, and I responded
20 to the scene.

21 Q And do you know approximately what time you got to
22 the scene that night?

23 A I arrived at about 10:00. I was notified at about 15
24 minutes after 9.

25 Q Once you got to the scene, was Investigator Mann

Trisha Collins - Direct by Ms. Campbell

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1 already there processing the interior of the crime
2 scene at the apartments?

3 A I think he had just received the search warrant and
4 had started processing the inside of the apartment.

5 Q Was there anything there at the scene in the parking
6 lot that was brought to your attention as possibly
7 being involved in this case?

8 A Well, when I arrived on the scene I made note,
9 something a little bit unusual. There was a truck
10 that was parked on the exit ramp from the apartment
11 complex that led to Faraway Drive. And I noticed
12 that it was parked with two wheels over the curb. It
13 was facing traffic. It was on the wrong side of the
14 road. It was partially on the pine straw. And I
15 thought that was quite strange. So my intention was
16 when I got down there to mention that to one of the
17 deputies who was on scene and ask them to go check it
18 out. When I arrived on scene I was told that several
19 people were seen running from that vehicle. And two
20 deputies were sent to secure it and then I responded
21 to photograph it.

22 Q So while Investigator Mann was inside processing that
23 scene you were at the car?

24 A That's correct.

25 Q Or the truck. I'm going to show you a series of

1 photographs and first just ask if you recognize
2 those?

3 **A** Yes, I do.

4 **Q** And are those the photographs you took that night?

5 **A** They are.

6 **Q** And do they fairly and accurately depict how the car
7 was that night when you observed it?

8 **A** Yes.

9 **MS. CAMPBELL:** Your Honor, at this time we'd
10 offer State's Exhibit 151, 112, 123, 122, 121, 120,
11 119, 118, 117, 116, 115, 114 and 113.

12 **THE COURT:** Objection?

13 **MR. HISKER:** No objection.

14 **THE COURT:** Without objection.

15 (WHEREUPON, State's Exhibit No. 112 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 113 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 114 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 115 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 116 is admitted
24 into evidence.)
25

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1 (WHEREUPON, State's Exhibit No. 117 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 118 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 119 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 120 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 121 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 122 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 123 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 151 is admitted
16 into evidence.)

17 **MS. CAMPBELL:** Your Honor, may the witness step
18 down?

19 **THE COURT:** Certainly.

20 **Q** That night when you -- and I notice that some of
21 these are rather dark. Is that correct?

22 **A** Yes.

23 **Q** I want to show you first what's been marked as
24 State's Exhibit 113. Do you recognize that?

25 **A** Yes.

1 Q And does that show kind of what you were talking
2 about, about how the car was actually positioned that
3 night?

4 A Yes, it does. You can actually see that two of the
5 tires are on the roadway and the other two tires are
6 on the pine straw..

7 Q And I show you State's Exhibit 114. And what does
8 that show?

9 A That's the back of the vehicle including the license
10 plate.

11 Q And at that point did you know whether or not this
12 vehicle had been stolen?

13 A No, ma'am.

14 Q And is this a closer up on 115?

15 A Yes, ma'am.

16 Q State's Exhibit 116, what does that show?

17 A The front of the vehicle.

18 Q And State's Exhibits 117 and 118?

19 A Again, shots of the front of the vehicle.

20 Q And does that also, especially on 118, does that show
21 kind of how it was positioned when you were talking
22 about it?

23 A Yes, sir.

24 Q And again, that was against the traffic, so it was
25 facing the wrong direction?

Trisha Collins - Direct by Ms. Campbell

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- 1 A That's correct.
- 2 Q State's Exhibits 119 and 120?
- 3 A That was damage that was done to the side of the
- 4 truck.
- 5 Q State's Exhibit 121?
- 6 A You can see that there is a piece of the vehicle
- 7 right there that's in the pine straw in front of it.
- 8 Q And was it metal, plastic, or what?
- 9 A Whatever the car is made out of, that's what it was.
- 10 I think it was plastic.
- 11 Q Okay. State's Exhibit 122?
- 12 A That's a side view of it from -- I was standing in
- 13 the pine straw when I took that.
- 14 Q And State's Exhibit 123?
- 15 A Again, another picture of the front of it.
- 16 Q Once you had photographed the exterior of the car,
- 17 did you also look around the area around the car for
- 18 any possible evidence?
- 19 A I did.
- 20 Q I want to show you what's been marked as State's
- 21 Exhibit 112. Do you recognize that?
- 22 A I do.
- 23 Q And what was that actual item that's shown there on
- 24 the ground in State's Exhibit 112?
- 25 A That was -- I believe it was a State Credit Union

1 identification card.

2 Q And who did it belong to?

3 A I believe it was Walter Huggins'.

4 Q Once had photographed that, did you collect that?

5 A I did.

6 Q Was that later returned to Mr. Huggins?

7 A It might have been. I don't know.

8 Q Finally, also on the car, was there another item that
9 you collected that night?

10 A Right. There was a beer can that was laying -- if I
11 was standing looking at the tailgate of the truck, it
12 was off to the left and behind the truck in the pine
13 straw.

14 Q And why did you think that was significant?

15 A Well, it was sort of new looking. It didn't look
16 like it had been there for a long time. And part of
17 our training is to collect anything that could
18 possibly be evidence. And so I decided that since it
19 was close by to the truck that I should go ahead and
20 take it.

21 Q I'm going to show you what's been marked as State's
22 Exhibits 168 and 169. Do you recognize those items?

23 A Yes.

24 Q And 168, is that the actual beer can you collected
25 that night?

- 1 **A** It appears to be, yes. Open it up?
- 2 **Q** You can open it.
- 3 **A** That was my seal, too. Yes.
- 4 **Q** And was the beer can -- Your Honor, at this time we'd
- 5 offer 168 and 169 into evidence.
- 6 **MR. HISKER:** No objection.
- 7 **THE COURT:** Without objection.
- 8 (WHEREUPON, State's Exhibit No. 168 is admitted
- 9 into evidence.)
- 10 (WHEREUPON, State's Exhibit No. 169 is admitted
- 11 into evidence.)
- 12 **Q** Was the beer can empty or full when you collected it
- 13 that night?
- 14 **A** I believe it was empty.
- 15 **Q** So it was in the same condition as it is here?
- 16 **A** Yes.
- 17 **Q** And as part of your training when you collected that,
- 18 did you also take some swabs from that beer can?
- 19 **A** I did actually swab the mouth or the opening, the
- 20 drink opening of the beer can.
- 21 **Q** And what was the purpose for that?
- 22 **A** To try to collect DNA.
- 23 **Q** Okay. And State's Exhibit 169, are those the swabs
- 24 you collected?
- 25 **A** They would be.

1 Q And those were later logged into evidence and
2 forwarded to DNA?

3 A Yes, ma'am.

4 Q Thank you. You can take the stand. You mentioned
5 some damage that had been done to the vehicle. What
6 side of the vehicle was that on?

7 A It was the left side, the driver's side.

8 Q And Investigator Mann has already testified. I know
9 he collected some of the items from the interior of
10 the vehicle. But did you also observe those items on
11 the inside such as I.D. cards, wallets, things of
12 that nature?

13 A Yes, ma'am.

14 Q And where were those located?

15 A They were in the front passenger's seat and in the
16 floorboard of the passenger's seat.

17 Q Did you observe anything significant in the bed of
18 the truck?

19 A In the bed of the truck was a -- there were a set of
20 keys. Sorry.

21 Q Do you recall seeing a spent shell casing in the bed
22 of the truck?

23 A Yes, ma'am. I believe so.

24 Q But that was not an item you collected that night.
25 That was actually collected by Investigator Mann?

1 A That's correct.

2 MR. HISKER: I object to leading.

3 THE COURT: Don't lead your witness. Ask a
4 question.

5 Q Who collected that?

6 A I didn't collect anything from the interior of the
7 truck.

8 Q And who was there that night actually doing that
9 collection?

10 A Investigator Mann.

11 Q Thank you. Did you go ahead and try to collect
12 fingerprints there at the scene of the car?

13 A No.

14 Q And what did you have done with the car that night?

15 A I had it towed back to our garage that we have in the
16 back of our headquarters where it would be secure and
17 nothing would be lost.

18 Q At a later time did you have the opportunity to
19 actually process that car?

20 A Yes. The exterior of it.

21 Q And what if anything were you able to collect?

22 A We found several palm prints and some partial
23 fingerprints.

24 Q From the exterior?

25 A Yes.

1 Q Did you also process the interior?

2 A No.

3 Q Do you know who did?

4 A I believe Investigator Mann did.

5 Q Okay. Ultimately in this case though were all the
6 fingerprints turned over to you for comparison at a
7 later date?

8 A Yes.

9 Q What was your next involvement in this case as far as
10 processing the crime scenes?

11 A The following day I returned to the crime scene with
12 several other investigators to continue the
13 processing inside the apartment.

14 Q And that would have been on August the 9th?

15 A Yes, ma'am.

16 Q And what did you observe when you went back? Had the
17 crime scene remained secured?

18 A Yes.

19 Q What did you observe when you went back to the crime
20 scene?

21 A When I arrived inside I could see there was a pool of
22 blood or a bloody part on the carpet in the living
23 room area. There was blood on the bar side, the
24 dining room side of the kitchen cabinets which I
25 think served as a bar. It looked as if the kitchen

1 had been set up as a little canteen or snack bar,
2 something like that. In the bedrooms were numerous
3 video gaming machines, tables set up with chairs, a
4 couple of trashcans. Those were in both of the
5 bathrooms -- I'm sorry -- in both of the bedrooms.
6 And in the bathroom there was a large cooler that was
7 padlocked in the bathtub.

8 Q What did you do there that day as far as the
9 interior? And this was Apartment [REDACTED]. Is that
10 correct?

11 A Yes, ma'am.

12 Q What did you do as far as processing the interior of
13 that apartment?

14 A What I primarily did was I processed the video game
15 machines. I collected the cigarette butts that were
16 in the ashtrays from the gaming rooms. I processed
17 the door, the front door. I assisted in
18 photographing some stains that were developed with
19 amido black on back of the front door. And that was
20 primarily it.

21 Q And when you processed the front door, were you able
22 to get any usable fingerprints?

23 A No, ma'am.

24 Q When you processed, did you also process the interior
25 doors and door frames?

- 1 **A** Yes.
- 2 **Q** Were you able to get any usable prints from those?
- 3 **A** No, ma'am.
- 4 **Q** You also mentioned that you processed the video poker
5 machines?
- 6 **A** Yes, ma'am.
- 7 **Q** Were you able to get some usable prints from those?
- 8 **A** We did, yes.
- 9 **Q** And finally, you also I believe processed the
10 interior part, not the exterior but the interior also
11 of the front door. Were you able to get usable
12 prints?
- 13 **A** No.
- 14 **Q** Did you also notice what appeared to be a partial
15 shoe print on a windowsill?
- 16 **A** I did. It was in the back bedroom, the back gaming
17 room. It was on the windowsill. And the screen of
18 the window was partially pushed out. The blinds were
19 down. They were broken up a little bit. And then
20 there was a shoe wear impression there on the
21 windowsill.
- 22 **Q** After processing that crime scene on the 9th, what
23 was your next -- did you have an opportunity to then
24 process a blue and gray GMC pick-up truck?
- 25 **A** I did.

Trisha Collins - Direct by Ms. Campbell

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- 1 Q And when did you do that?
- 2 A I did that on the 10th.
- 3 Q Where did you actually do the processing of it?
- 4 A The actual processing was complete in the same garage
- 5 as the green pick-up truck.
- 6 Q As the green pick-up truck?
- 7 A Mm-hmm (affirmative).
- 8 Q And did you also process the green pick-up truck that
- 9 day also?
- 10 A Yes. The exterior of it.
- 11 Q Okay. Had anyone made a request of you to collect
- 12 certain items from the pick-up?
- 13 A The first contact I had with the pick-up truck, it
- 14 was the green -- I'm sorry -- the blue and silver
- 15 pick-up truck. It was parked in the parking lot of
- 16 our headquarters. And Sergeant Ewing asked that I
- 17 photograph and collect a cellphone that was in the
- 18 bed of the truck.
- 19 Q And did you find the cellphone he was requesting?
- 20 A I did.
- 21 Q And did you collect that and turn it over to Sergeant
- 22 Ewing?
- 23 A I actually processed the phone at that point, and he
- 24 and I went through the numbers in it. He wrote the
- 25 numbers down and I actually kept the phone and then

1 eventually turned it into evidence.

2 Q And when you processed that phone were you able to
3 get usable prints from it?

4 A No, ma'am.

5 Q I'm going to show you two photographs, State's
6 Exhibits 61 and 62. Do you recognize that?

7 A Yes, ma'am.

8 Q And what is that?

9 A This is the cellphone that I collected from the bed
10 of the silver and gray -- or I'm sorry -- the silver
11 and blue truck.

12 MS. CAMPBELL: Your Honor, at this time we'd
13 offer 61 and 62 into evidence.

14 MR. HISKER: No objection.

15 (WHEREUPON, State's Exhibit No. 61 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 62 is admitted
18 into evidence.)

19 Q You mentioned that you didn't get usable prints. And
20 that's been kind of -- is it unusual not to get a
21 print from an item when you process it?

22 A No.

23 Q And tell the jury why that is?

24 A Most items are touched over and over and over again.
25 And in addition to whatever dirt and oil might be on

1 them from just having been used, you add to that the
2 dirt and oil that are on your fingertips which make
3 up the fingerprint that's left behind. And
4 especially something like a cellphone or a doorknob
5 or something like that that's touched over and over
6 and over again, what you have is the build up. And
7 so you can see a very dark spot where things have
8 touched but you don't any of the ridge detail which
9 is what we need to make an identification.

10 Q So your findings in this case were not unusual?

11 A No.

12 Q Once you had dealt with the phone, did you then have
13 the truck towed somewhere?

14 A We had it towed into the garage, the same garage as
15 the green truck.

16 Q I'm going to show you what's been marked as State's
17 Exhibit Nos. 177, 178 and 179. Is that the truck
18 we're talking about?

19 A Yes, ma'am.

20 MS. CAMPBELL: Your Honor, at this time we'd
21 offer these into evidence.

22 MR. HISKER: No objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 177 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 178 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 179 is admitted
4 into evidence.)

5 Q I show you State's Exhibit 178 which is the rear of
6 the truck. Is that how it appeared when you first
7 came in contact with it?

8 A I don't recall if it had a tag on it or not.

9 Q And, in fact, it did not have tag on it. Is that
10 correct?

11 A It could be. I don't recall.

12 Q But you photographed it how it appeared that day?

13 A Right.

14 Q And this is it?

15 A Right.

16 Q Okay. Once in the garage, what if anything did you
17 do with it?

18 A I processed the exterior of the vehicle for
19 fingerprints. I collected all of the items that were
20 inside it. I swabbed several locations on the
21 interior and exterior of the vehicle for possible DNA
22 deposits.

23 Q And were you able to get any useable prints from the
24 interior?

25 A We had one partial print that was usable.

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1 Q You mentioned items that you collected. What types
2 of items did you collect from the bed of the truck?

3 A About everything you could possibly imagine.
4 Clothing, baseball caps. Would you like me to read
5 the entire list?

6 Q Just if we can concentrate on the bed of the truck
7 first.

8 A Okay. A hydraulic jack, a towing chain, a tackle
9 box, a tire iron, a red gas can in a white plastic
10 bag, a black cloth-covered button, a piece of blue
11 plastic, an Advanced Auto Parts receipt, a bottle of
12 motor oil, a yellow top. It was possibly the top of
13 the gas can. A yellow and black flat head
14 screwdriver, a water gun, a live Winchester 12-gauge
15 shotgun round.

16 Q Okay. And that was a live 12-gauge shotgun round?

17 A Yes.

18 Q I'm going to show you a series of photographs,
19 State's Exhibits No. 63 through 71. Do those show
20 the items that were located in the actual bed of the
21 truck?

22 A Yes, they do.

23 Q And while we're doing this, I'm going to show you
24 State's Exhibits 79 through 85. Do those show the
25 interior of that truck that you processed, the blue

1 one?

2 **A** Yes, they do.

3 **MS. CAMPBELL:** Your Honor, at this time we'd
4 offer all those into evidence.

5 **MR. HISKER:** No objection.

6 **THE COURT:** Without objection.

7 (WHEREUPON, State's Exhibit No. 63 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 64 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 65 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 66 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 67 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 68 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 69 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 70 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 71 is admitted
24 into evidence.)

25

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1 (WHEREUPON, State's Exhibit No. 79 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 80 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 81 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 82 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 83 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 84 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 85 is admitted
14 into evidence.)

15 Q You mentioned that you found a live shotgun round
16 inside the bed of the truck. I'm going to show you
17 what's been marked as State's Exhibit 166. Do you
18 recognize that?

19 A Yes, I do.

20 COURT REPORTER: I'm sorry. What number was
21 that again?

22 MS. CAMPBELL: 166.

23 COURT REPORTER: Okay. Thank you.

24 Q And in the interior of the truck, in the back seat, I
25 notice that there is a license plate that is in one

1 of these photographs?

2 A Yes.

3 Q I'm going to get you step down. I'm going to show
4 you State's Exhibit 167. Is that a license plate
5 found in the interior of the vehicle?

6 A Yes, it is.

7 MS. CAMPBELL: Your Honor, at this time I'd
8 offer those two items in evidence as well.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 166 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 167 is admitted
13 into evidence.)

14 MS. CAMPBELL: Your Honor, may the witness step
15 down?

16 THE COURT: Certainly.

17 Q First those two, the bed of the truck, I show you
18 what's been marked as State's Exhibit No. 65. What
19 does that show?

20 A That's the bed of the truck. That's when I initially
21 photographed it in the parking lot.

22 Q State's Exhibit No. 166 -- 66. Excuse me. Just 66.
23 What does that show?

24 A It's the bed of the truck.

25 Q State's Exhibit No. 67, was that taken at a later

1 time?

2 A Yes.

3 Q And were certain items removed to expose other items?

4 A Right. The cellphone had been moved and still had
5 the gas can.

6 Q And State's Exhibit No. 68, what does that show?

7 A That shows the cartridge, the shotgun cartridge and a
8 couple of other items from the back of the truck.

9 Q As well as State's Exhibit No. 69?

10 A That's the shotgun cartridge.

11 Q And again, that was originally underneath the gas
12 can?

13 A It was behind the gas can.

14 Q Behind it. And just to be clear, State's Exhibit
15 No. 166, that's the shotgun shell?

16 A Yes.

17 Q I show you State's Exhibit No. 70. What does that
18 show?

19 A That's the screwdriver that I found in the back, the
20 bed of the truck.

21 Q State's Exhibit 71?

22 A That's the chain and the piece of plastic.

23 Q You mentioned a phone. State's Exhibit 63, does that
24 show where you initially found it?

25 A It is. It's right there under the gas can.

- 1 Q And in State's Exhibit No. 64?
- 2 A Yes.
- 3 Q The interior of the truck, starting with State's
- 4 Exhibits No. 83 and 82, what does that show?
- 5 A That's the front seat.
- 6 Q State's Exhibit No. 81?
- 7 A That's the floorboard of the front passenger's seat.
- 8 Q State's Exhibit No. 84?
- 9 A That's a hat that was found in the back seat.
- 10 Q State's Exhibit Nos. 80 and 79?
- 11 A That was the back seat. No. I'm sorry. That's the
- 12 front seat. This is the back seat.
- 13 Q I'm sorry. This is the front seat shown in State's
- 14 Exhibit 80?
- 15 A Yes.
- 16 Q And this would be the back seat?
- 17 A That's correct.
- 18 Q Finally you mentioned the license plate that was
- 19 found, State's Exhibit No. 85?
- 20 A That's right. The shirts were actually on the seat,
- 21 and the license plate is in the front of the vehicle.
- 22 Q And that's the license plate that's from State's
- 23 Exhibit 167?
- 24 A Yes, ma'am.
- 25 Q The 12-gauge shotgun round itself, did you process

1 it?

2 A I did.

3 Q And were you able to get usable prints off of it?

4 A No.

5 Q And is that unusual with shotgun shells?

6 A No.

7 Q Explain that to the jury. Why?

8 A Again, in addition to the surface being very poor,
9 you can see that this actually has some ridges on it.
10 The best prints that you can get, the best possible
11 surface is something that's smooth and flat like
12 glass or a car, that's not on a curved surface,
13 something like that. In this case you have a curved
14 surface. You've got some texture to it and you've
15 got something that's probably been touched over and
16 over again.

17 Q You mentioned that you also processed I believe the
18 green Sierra pick-up truck?

19 A Yes. The exterior.

20 Q Did you also take some photographs of the wallets and
21 the identification cards that had been taken from
22 that green Sierra?

23 A I did.

24 Q In addition to that, did you note anything in the
25 back seat?

- 1 A There was a suitcase and a candy wrapper.
- 2 Q In the bed of the truck did you also observe certain
3 items?
- 4 A I did. In the bed of the truck was a piece of bent
5 wood, a walking cane and a bottle of Gatorade.
- 6 Q And I show you State's Exhibit No. 145. Is this the
7 walking cane?
- 8 A It looks to be, yes.
- 9 Q Were you able to develop any -- was anyone assisting
10 you in processing the exterior of the truck?
- 11 A Yes. Sergeant Clemons was. Sergeant at the time.
12 Lieutenant now.
- 13 Q Were you able to develop any, fingerprints, usable
14 fingerprints from the exterior of the truck?
- 15 A Yes.
- 16 Q And how many were actually developed?
- 17 A We identified three of them. I believe I would have
18 to look at the individual latent cards to -- I can
19 look at my report. There were four lifted from the
20 green truck.
- 21 Q And you mentioned that three of those were later
22 identified --
- 23 A Yes.
- 24 Q -- as belonging to a person?
- 25 A Yes.

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1 Q And the fourth one, was it usable?

2 A No, it was not.

3 Q And we'll get the results of who that was later.

4 August the 11th did you assist in the execution of a
5 search warrant on [REDACTED] ?

6 A I did.

7 Q And what was your purpose there?

8 A I was there to photograph the residence and to
9 collect any evidence that might be found there.

10 Q I show you --

11 MR. HISKER: Judge, I have a matter of law I
12 need to take up.

13 THE COURT: Approach the bench.

14 (Whereupon, a bench conference is had).

15 THE COURT: All right, ladies and gentlemen. I
16 need to take this up with the attorneys on the
17 record. And the reason again that I need to excuse
18 you from the courtroom is I need to take these
19 matters up on the record. I can't do it up here.
20 They want me to hear what they have to say and record
21 it. So I'm going to ask you, just excuse you from
22 the courtroom for a few minutes while we take this
23 matter up. Just relax. And we'll call you back.
24 I'm watching the clock. We're not quite ready for
25 lunch hour yet.

1 (Jury out at 12:04 p.m.)

2 THE COURT: All right. I don't know this needs
3 a proffer. What's the objection?

4 MR. HISKER: I'm going to object to the
5 questioning and the introduction of evidence of a
6 pair of shorts that was found at the search warrant
7 where Mr. Middleton was arrested. They are khaki
8 shorts with some small spots which they determined
9 was blood. But it's Mr. Middleton's blood. It's not
10 the victim's blood.

11 There hasn't been any testimony in the record
12 that I recall of anybody wearing khaki shorts. And I
13 believe this testimony is -- not only is it not
14 relevant, but it would be unduly prejudicial because
15 it would imply some type of defensive wound.

16 I know the State also has some photographs that
17 they say may contain scratches. But there's been no
18 testimony of any -- there has been no testimony of
19 any type of defensive contact. All the testimony has
20 been the aggressor striking the victims. There is no
21 forensic evidence that ties Mr. Middleton to these
22 victims, no skin under the fingernails.

23 THE COURT: Well, I don't know that. I mean,
24 you know that. I don't at this stage of the
25 proceedings.

1 MR. HISKER: And this blood could have come from
2 anywhere. To me it just gives the jury the improper
3 idea that somehow that this blood stain occurred as a
4 result of the robbery.

5 THE COURT: Ms. Campbell.

6 MS. CAMPBELL: That makes it relevant.

7 MR. HISKER: Not when there is no basis for them
8 to come to that conclusion.

9 MS. CAMPBELL: Well, you did.

10 THE COURT: How were the shorts obtained?

11 MS. CAMPBELL: They were obtained pursuant to a
12 lawful search warrant, Your Honor.

13 THE COURT: We're on the record now. Is there a
14 challenge to the search warrant?

15 MR. HISKER: No. There is not a challenge to
16 the search warrant.

17 THE COURT: And certain items of the defendant's
18 clothing -- was he arrested at the time the search
19 warrant was issued?

20 MS. CAMPBELL: Yes, sir. Yes, sir.

21 THE COURT: Items of the defendant's clothing
22 were collected as a result of the search warrant.
23 Your objection is that -- I don't know if it's going
24 to be linked up or not. Is there any reason -- other
25 than the fact that they were found pursuant to the

1 search warrant, is there any other relevance to this
2 case?

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: For the record.

5 MS. CAMPBELL: Do you want me to put it on the
6 record?

7 THE COURT: Yes.

8 MS. CAMPBELL: Yes. They're relevant to the
9 case. They're found pursuant to a search warrant in
10 the residence where he is arrested. At the time they
11 have his blood on them, and we have photographs of
12 his arms where they're scratched up. And the
13 testimony has been, Your Honor, this was a bloody,
14 brutal assault, somewhat frantic. Our position is
15 it's consistent with him having sustained some
16 injuries to himself at the time of the assault and
17 now we have blood on his pants. It's a reasonable
18 inference.

19 THE COURT: How many days later?

20 MS. CAMPBELL: Three. He does this on the 8th
21 and we arrest him on the 11th.

22 MR. HISKER: Judge, I'd also like, if Ms.
23 Campbell is going to refer to the pictures of the
24 scratches, I'd like Your Honor to look at those
25 scratches. To me they look like old wounds. There

1 is not going to be any testimony these are new
2 wounds.

3 MS. CAMPBELL: He can argue that.

4 MR. HISKER: If that's the case, then I'd like
5 the photographs to be made a part of the record,
6 because these look like old scratches.

7 THE COURT: Let's go ahead and deal with the
8 photographs anyway because apparently they are
9 relevant to this issue.

10 MS. CAMPBELL: Let me get the photographs, Your
11 Honor. Beg the Court's indulgence while I find them.
12 Your Honor, I'd hand up what's been marked as State's
13 Exhibits 87, 86, 90, 89, 56, 59 and 58.

14 THE COURT: All right.

15 MS. CAMPBELL: I'm taking out -- there's some
16 more of them. I'm handing up three photographs which
17 are repetitive, 56, 57 and 58. In addition, Your
18 Honor, State's --

19 THE COURT: These are made three days later?

20 MS. CAMPBELL: -- 57 and 60. These were made,
21 yeah, the day he was arrested.

22 THE COURT: All right. As to 60, what's the
23 objection?

24 (WHEREUPON, State's Exhibit No. 180 is marked
25 for identification.)

1 **MR. HISKER:** First of all, I'd object it's not
2 relevant. There's no question that this is the
3 gentleman that they arrested that day. It's not
4 necessary. It shows tattoos on his arms which I
5 believe are prejudicial, in addition to the complete
6 lack of the relevance of this photograph. The fact
7 of the matter is, this is where -- he was there when
8 they arrested him and he's still right here.

9 **MS. CAMPBELL:** I don't understand that argument.
10 But, I mean, our position is that these are wounds
11 that could have been inflicted.

12 **THE COURT:** No, no, no. We're just talking
13 about a frontal picture of him.

14 **MS. CAMPBELL:** I'll withdraw that one. That's
15 fine.

16 **THE COURT:** All right. Withdraw it. Now,
17 photograph No. 57.

18 **MR. HISKER:** Again, 57 is a blown up photograph.
19 He has an (803) tattoo on his arm which I believe is
20 extremely prejudicial.

21 **THE COURT:** That's my area code. Why is that
22 prejudicial?

23 **MR. HISKER:** Well, it's been publicized in the
24 media recently that's a gang affiliation, that that's
25 a gang tattoo. There has been a lot of gang

1 publicity lately. And it's just unnecessary. The
2 scratches that -- I would note these scratches
3 appear --

4 **THE COURT:** Well, we're going to get to the
5 scratches. I didn't think I saw any scratches on
6 that.

7 **MR. HISKER:** Well, I believe these are the
8 scratches Ms. Campbell is talking about in 57.

9 **THE COURT:** Well, I've got the ones that
10 obviously are scratches --

11 **MR. HISKER:** Yes, sir.

12 **THE COURT:** -- or that obviously intends to be
13 shown as scratches. Not that one.

14 **MR. HISKER:** But the scratches in State's
15 Exhibit 57 I'd note are completely dried over. There
16 are no wet spots or blood spots. They appear to be
17 old wounds. There are --

18 **THE COURT:** All right. Go ahead.

19 **MR. HISKER:** There are many scratches on this
20 arm. There has been no testimony in any way that
21 would suggest that this would happen from either a
22 person or defensive wounds or otherwise.

23 **THE COURT:** Well, then we might as well talk
24 about what you're talking about, scratches. 56, 57,
25 58 and 59 I assume are all intended to depict

1 scratches. The question is whether they're
2 admissible.

3 **MR. HISKER:** And my argument first is that
4 they're not relevant. There has been no testimony of
5 any scratching to anyone in this case.

6 **THE COURT:** Well, there's certainly been
7 testimony from all of these witnesses that there was
8 chaos, beatings, and eventually a homicide; I think
9 from which the jury could infer that somebody came
10 out of that melee with some sort of wounds or
11 injuries in addition to the people who have already
12 testified.

13 I have heard no testimony that Mr. So-and-so
14 scratched so-and-so. It seems to me it's a jury
15 issue. I mean, it may be prejudicial, but everything
16 is prejudicial to some extent. The question is
17 whether the prejudicial value outweighs the probative
18 value. And it's certainly probative of something if
19 indeed those are recent scratches.

20 Now, certainly you can take the position that in
21 your opinion -- and I might agree with you that they
22 appear to be old scratches, but they are certainly
23 visible scratches. There may be scratches on your
24 client's arm today. I don't know. I mean, I'm
25 really not in a position to make a determination as

1 to when the scratches were made, whether they bled or
2 didn't bleed.

3 The definition of relevance, as you know, is
4 relevant evidence means evidence having any -- and
5 that's a big word -- any tendency to make the
6 existence of any fact that is of consequence to the
7 determination of the action more probable or less
8 probable than it would be without the evidence. I
9 mean, that is a very, very broad definition of
10 relevance. I mean, that is relevance under our rule.
11 Does it have any tendency to make the existence of
12 any fact more probable or less probable? I think so.

13 **MR. HISKER:** Judge, my question is, what fact
14 are they seeking to prove with this? There has been
15 no -- there is no issue about defensive wounds. I'm
16 saying it's not relevant because it doesn't prove
17 anything.

18 **THE COURT:** I think the main fact they're trying
19 to prove is that your client was there. Right?

20 **MR. HISKER:** Correct.

21 **THE COURT:** That's the fact that they're trying
22 to prove. Whether that proves it or not, I don't
23 know. That's a jury question.

24 **MR. HISKER:** And there is no link at all.

25 **THE COURT:** Well, I don't know. I mean, this

1 trial has only been going on one day. I don't know
2 whether they've got any links.

3 MR. HISKER: And there is no -- I would expect
4 there to be expert testimony these are consistent
5 with defensive wounds.

6 THE COURT: Well, you may be able to make that
7 argument at directed verdict stage.

8 MR. HISKER: My second objection is under 403,
9 especially the tattoos with gang affiliations.

10 THE COURT: Well, you are the only person that
11 has said gang. You are the only person in this trial
12 that's said gang. And I have to note for the record
13 that your client has been here for two days with a
14 short sleeved shirt on, and I have visibly witnessed
15 and observed the same things that are in those
16 photographs. And the jury has seen them, too; or
17 they have had the opportunity to see them. So now to
18 say that a photograph of something that is plainly
19 visible in this courtroom is prejudicial strikes me
20 as a little bit hollow.

21 I mean, they are what they are. I don't know
22 that those aren't tattoos he got when he was 12 years
23 old or that he got them while he's been in the
24 Department of Corrections or in Alvin S. Glenn. I
25 don't know that. I don't know that they're gang

1 symbols. I don't interpret them as gang symbols.
2 Nobody has said gang. The minute somebody raises the
3 issue of gangs, then you've got an argument.

4 MR. HISKER: It's my position when the jury sees
5 these photos close up in hand that they will make
6 that connection based on the media coverage of the
7 (803) Gang.

8 THE COURT: I can't base a ruling on what you
9 think.

10 MR. HISKER: And I'd also note the proximity
11 from Mr. Middleton to the jury and that he really has
12 not come in close proximity to them at all for them
13 to notice these tattoos.

14 THE COURT: Well, certainly not close enough. I
15 agree with that. The objection is overruled. Now,
16 let's go to the shorts, to the short pants.

17 MR. HISKER: Yes, sir. I believe my objection
18 on that is on the same grounds. I mean, there is
19 some small items of blood on these shorts that link
20 back to Mr. Middleton.

21 THE COURT: They're found at his -- I don't
22 know. Was DNA done? This is a DNA case?

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: His DNA.

25 MS. CAMPBELL: There is DNA that comes back.

1 It's his blood.

2 **MR. HISKER:** It's his blood on the shorts found
3 where he stays.

4 **THE COURT:** Do you stipulate to that?

5 **MR. HISKER:** Well, he's there. He's there at
6 the residence.

7 **THE COURT:** No. I said are you going to
8 stipulate to that so we don't have to bring the DNA
9 person in? It doesn't matter.

10 **MR. HISKER:** I'm going to have to review the
11 rest of this DNA report to determine that.

12 **THE COURT:** Ms. Campbell.

13 **MS. CAMPBELL:** Your Honor, clearly it's
14 relevant. I mean, it's blood found on shorts when he
15 is arrested. The testimony has been from at least
16 one witness that they were wearing short pants. He
17 is there in the house when he's arrested. We find
18 blood that is consistent with the scratches we've
19 just argued.

20 **THE COURT:** Okay. Approach the bench.

21 (Whereupon, a bench conference is had)

22 **THE COURT:** All right. The objection is
23 overruled as to the testimony and photographs of the
24 short pants. Bring the jury, please.

25 (Jury in at 12:20 p.m.)

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1 **THE BAILIFF:** Your Honor, the jury is present.

2 **THE COURT:** Thank you very much. All right, Ms.
3 Campbell. You may continue.

4 **MS. CAMPBELL:** Thank you, Your Honor.

5 **Q** I'll hand you a series of photographs which have been
6 marked 29 through 40, State's Exhibit 175, 160, 163,
7 164, 159, 158, 155, 156, 157, 161 and 162 and ask you
8 to review those. Do those fairly and accurately
9 depict the [REDACTED] where you assisted in
10 executing a search warrant?

11 **A** Yes.

12 **Q** And are those photographs you actually took that day?

13 **A** Yes.

14 **MS. CAMPBELL:** Your Honor, we'd offer them into
15 evidence.

16 **THE COURT:** Over the objection of the defendant.

17 **MS. CAMPBELL:** Yes, sir.

18 **THE COURT:** Admitted into evidence.

19 **MS. CAMPBELL:** Thank you.

20 (WHEREUPON, State's Exhibit No. 29 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 30 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 31 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 32 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 33 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 34 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 35 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 36 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 37 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 38 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 39 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 40 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 155 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 156 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 157 is admitted
24 into evidence.)

25

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1 (WHEREUPON, State's Exhibit No. 158 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 159 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 160 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 161 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 162 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 163 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 164 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 175 is admitted
16 into evidence.)

17 Q When you got to the residence that day, was anyone
18 taken into custody that you're aware of?

19 A There was one person who was in custody at that
20 point.

21 Q And who was that?

22 A I don't know.

23 Q Were you aware that the defendant, Octavia Middleton,
24 was there at the scene that day?

25 A I knew someone was there who was a suspect, but I

1 didn't know the name.

2 Q Once you got there, can you tell the jury generally
3 what you did initially and what your purpose was?

4 A I initially made contact with Investigator Faust.
5 And he asked me to photograph the house. They had
6 already done a search on the house. And he asked me
7 to photograph the house and the items that he had
8 pointed out to me and then to collect those items.

9 Q And first I want to concentrate on some clothing that
10 you located in a bedroom area I believe. I'm going
11 to show you what's been marked as State's Exhibit
12 157, 161 and 160. First, just what do those
13 represent?

14 A This is the clothing that was strewn about the room.
15 And there are three bedrooms in the house. This was
16 one bedroom was in the back left corner. And these
17 are the clothing that were found in the back left
18 bedroom.

19 Q And one of those items that's shown in that picture
20 is a jersey type?

21 A Yes, ma'am.

22 Q And what does it say on front?

23 A It says Atlanta.

24 Q Okay. Can I have this?

25 A Oh, yes. I'm sorry.

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1 Q And I show you what's been marked as State's Exhibit
2 165. What is that item?

3 A This is the red Atlanta basketball type jersey.

4 MS. CAMPBELL: Your Honor, at this time we'd
5 offer that into evidence.

6 MR. HISKER: No objection.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 165 is admitted
9 into evidence.)

10 Q I'm going to show you what's now in evidence as
11 State's Exhibits 159 and 158. Do you recognize those
12 photographs?

13 A Yes, I do.

14 Q And what do those represent?

15 A This was the laundry area that was behind the kitchen
16 in the house and a pair of shorts that had been
17 pulled out of the washer I believe.

18 Q And I show you what's been marked as State's Exhibit
19 180. Do you recognize that?

20 A Yes, I do.

21 Q And are those the shorts that you actually collected
22 that day from the wash area you've just testified
23 about?

24 A Yes.

25 MS. CAMPBELL: Your Honor, at this time we'd

1 offer them into evidence.

2 THE COURT: Over the defendant's objection, so
3 admitted.

4 (WHEREUPON, State's Exhibit No. 180 is admitted
5 into evidence.)

6 Q And I noticed when looking at these pants, when you
7 pull them out, do they have some markings on them?

8 A That's correct.

9 Q Were those markings on them when you collected them?

10 A No, ma'am.

11 Q How would those markings get on them?

12 A Investigator Amick and I looked at the pants after I
13 had brought them back to the lab. And he marked the
14 spots where there were reddish stains and then made
15 small cuttings from them.

16 Q So those were submitted for DNA testing?

17 A Yes, ma'am.

18 Q And I show you State's Exhibit No. 163. What room
19 does that represent?

20 A That's the living room.

21 Q And is that how it appeared when you take this
22 photograph?

23 A Yes.

24 Q Was there anything significant that you would
25 photograph this chair for?

1 **A** There were two live 12-gauge shotgun shells behind
2 the love seat there.

3 **Q** I show you what's been marked as State's Exhibit 171.
4 Did you collect these that day?

5 **A** That's the package. It doesn't appear to be open.
6 So, yes.

7 **MS. CAMPBELL:** Your Honor, at this time we'd
8 offer them into evidence.

9 **A** Yes. These are the same ones.

10 **MR. HISKER:** No objection.

11 **THE COURT:** Without objection.

12 (WHEREUPON, State's Exhibit No. 171 is admitted
13 into evidence.)

14 **Q** And those were located under the love seat?

15 **A** That's correct.

16 **Q** Was that the only item of significance that you found
17 in that front area?

18 **A** In the living room, yes.

19 **Q** As you moved further back in the house, do you recall
20 a TV on a nightstand?

21 **A** That's right. In the front right-hand bedroom.

22 **Q** I show you what's been marked as State's Exhibit 156,
23 40, 155. Do you recognize those?

24 **A** I do.

25 **Q** And during the search, your search, did you locate

1 something significant under that TV stand?

2 A Yes. In the drawer was an open box of 12-gauge
3 shotgun shells.

4 Q I meant to show you these a minute ago. Let me back
5 up. I show you State's Exhibit No. 30 and 31. Do
6 those show -- you just testified about State's
7 Exhibit No. 171. Do those show how those were
8 located behind that seat?

9 A Yes.

10 Q Back to your testimony about what I just handed you.
11 State's Exhibit 156 and 40 and 155. Excuse me. What
12 does that show?

13 A That's the television stand that was in the right
14 front bedroom and the open drawer which contained the
15 box of shotgun shells.

16 Q I show you what's been marked as State's Exhibit 173.

17 THE COURT: Just do it over here.

18 Q Do you recognize this?

19 A Yes. This is the box of shotgun shells from that
20 drawer.

21 MS. CAMPBELL: Your Honor, at this time we'd
22 offer it into evidence.

23 MR. HISKER: No objection.

24 (WHEREUPON, State's Exhibit No. 173 is admitted
25 into evidence.)

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1 Q And do you know how many rounds were actually in
2 this?

3 A I know the rounds were out of it. I don't know that
4 I counted them. Ten live rounds.

5 Q Moving on through the house, State's Exhibit No. 164,
6 what does that show?

7 A That's the front right bedroom from the hallway.

8 Q Did you find anything else of significance in there?

9 A Yes. Under the bed in that same room was a box of
10 one hundred 12-gauge shotgun shells. And in the
11 closet of that room was a sock that had twelve
12 12-gauge shotgun shells in it.

13 Q And I show you State's Exhibit 32 and 33. What do
14 those show?

15 A That's the bed and the box of shotgun shells that was
16 under it.

17 Q And I show you State's Exhibit No. 175.

18 A That's the dirty looking sock on the top shelf of the
19 closet.

20 Q And what was in it?

21 A Shotgun shells.

22 Q I show you what's been marked as State's Exhibit 174
23 and 172. Do you recognize those?

24 A Yes. These are the shotgun shells from the sock in
25 the closet.

1 Q And 172. It's heavy.

2 A Yes. This is the box of shells from underneath the
3 bed in the front bedroom.

4 Q Did you also search in the kitchen area?

5 A I did.

6 Q I show you what's been marked as State's Exhibit
7 No. 36, 35 and 34. Do you recognize those?

8 A Yes. These are photographs of the kitchen area and
9 the kitchen drawer.

10 Q Okay. And what is significant in the kitchen drawer?

11 A There are shotgun shells in the kitchen drawer.

12 Q I show you what's been marked as State's Exhibit
13 No. 170. Do you recognize these?

14 A Yes. These were the shotgun shells from the drawer.

15 MS. CAMPBELL: Your Honor, we'd offer these in
16 evidence at this time.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit No. 170 is admitted
19 into evidence.)

20 Q Did you process that scene there at Carnegie Street
21 there that day?

22 A I collected the items there and photographed it.

23 Q Okay. But you didn't look for any fingerprints
24 there?

25 A No. I actually processed some of the items or the

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1 items that I collected back at the lab when I had
2 them back in the lab.

3 Q What items did you actually process back at the lab?

4 A I processed the box of 100 cartridge casings, shotgun
5 shell casings, the box of 25 shotgun shells, an
6 ashtray, and the clothing was taken to the DNA lab to
7 be inspected there.

8 Q Okay. I want to turn your attention to August the
9 12th of 2005. Did you receive certain items from
10 Captain Smith?

11 A I did. Captain Smith gave me a Maverick 12-gauge
12 shotgun, Model 88.

13 Q I show you what's been marked as State's Exhibit 176.
14 Do you recognize this?

15 A Yes.

16 Q And is that the shotgun you actually received?

17 A Yes.

18 MS. CAMPBELL: Your Honor, at this time we'd
19 offer 176 into evidence.

20 MR. HISKER: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 176 is admitted
23 into evidence.)

24 Q Once you received that from him, and how was it
25 housed or kept when you received it?

1 **A** It was wrapped in a sheet when I received it.

2 **Q** Did you photograph it in the condition that you
3 received it?

4 **A** I did.

5 **Q** I'm going to show you some photographs, 49 through 55
6 and 97 and ask you if you recognize those?

7 **A** Yes. These are the photographs I took of the gun.

8 **MS. CAMPBELL:** Your Honor, at this time we'd
9 offer them in evidence.

10 **MR. HISKER:** No objection.

11 **THE COURT:** Without objection.

12 (WHEREUPON, State's Exhibit No. 49 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 50 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 51 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 52 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 53 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 54 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 55 is admitted
25 into evidence.)

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1 (WHEREUPON, State's Exhibit No. 97 is admitted
2 into evidence.)

3 Q And I notice in State's Exhibit No. 97 as well as 49
4 the gun is actually sitting on a sheet?

5 A Yes, ma'am.

6 Q Is that how it was given to you from Captain Smith?

7 A It was actually completely wrapped in the sheet.

8 Q Did you make any observations about the condition of
9 the gun?

10 A The butt of the gun actually had some dirt in it, and
11 there was some grass in the gun as well.

12 Q As far as the fingerprint comparisons in this case,
13 did you attempt or do all the comparisons in this
14 case?

15 A I did.

16 Q And did you get some of what's -- in order to do a
17 fingerprint comparison, do you have to have a known
18 comparison to compare it to?

19 A Right. If we have a known standard, it's compared to
20 the unknown prints, the latents.

21 Q And did you receive some known standards from certain
22 people in this case?

23 A I did.

24 Q And who were they?

25 A I received them from Teran Marquis Scott, Octavia

- 1 Middleton, Harry Recus Dukes, Walter J. Huggins,
2 Jerry J. Gordon, Dennis Ray Roberts, Carlos McArthur
3 Brown and William P. Rickenbaker, Jr.
- 4 Q And taking them in whatever order is best for you, as
5 far as the areas that had been processed and the
6 items that were turned over to you, were you able to
7 match up -- like you mentioned that you had processed
8 at the scene the poker machines?
- 9 A That's right.
- 10 Q And were you able to match those up to anyone?
- 11 A Three of them were matched up to Dennis Ray Roberts.
- 12 Q And just to simply this for purposes of this, as far
13 as the known fingerprints, were those all the known
14 fingerprints you were able to do, or were there
15 additional ones that you couldn't do?
- 16 A Oh, there were many others that I wasn't able to do
17 anything with.
- 18 Q And that was from the poker machines, right?
- 19 A That's correct.
- 20 Q Were you able to match it to Octavia Middleton?
- 21 A No, ma'am.
- 22 Q Were you able to match it to Teran Scott?
- 23 A No, ma'am.
- 24 Q Or to Harry Dukes?
- 25 A No, ma'am.

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1 Q Were there any other usable prints from Apartment [REDACTED]
2 itself?

3 A In addition to the ones from the video poker
4 machines, we had one that was lifted from -- it was
5 lifted from the table, the coffee table, the top edge
6 of the coffee table that was from the living
7 room/dining room area of Apartment [REDACTED].

8 Q And were you able to match it to any of the known
9 standards you had?

10 A No, ma'am.

11 Q Did you also get prints from a folding chair there at
12 the scene?

13 A Yes.

14 Q Were you able to use any of those prints?

15 A No. They were of no value.

16 Q And when you say they were of no value, what does
17 that mean? Are they usable?

18 A No.

19 Q They just aren't good enough?

20 A Right. They don't have enough characteristics in
21 them.

22 Q Were you able to try to do some comparisons from the
23 prints you actually collected from the exterior of
24 the green truck?

25 A Yes, I did.

1 Q And you mentioned that there were four?

2 A Yes.

3 Q Were you able to match any of those?

4 A Three of them were matched to Harry Dukes.

5 Q To Harry Dukes?

6 A Yes.

7 Q And the fourth one?

8 A That was of no value. It was not usable.

9 Q Okay. So the three fingerprints that you got from

10 the exterior of the green truck matched to Harry

11 Dukes?

12 A Right. They were palm prints.

13 Q Did you also get a partial print from the passenger

14 door of the blue GMC --

15 A Yes.

16 Q -- truck? Were you able to use it?

17 A Yes.

18 Q And were you able to match it to any of the known

19 standards you had?

20 A No.

21 Q Did you also get a partial palm print from the

22 exterior of the green truck?

23 A Yes.

24 Q And what were you able to do with it?

25 A That was Harry Dukes'.

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- 1 Q And again, that was from the green truck. Is that
2 correct?
- 3 A That's correct.
- 4 Q So, of all the prints that were usable from the green
5 truck, they all matched to Harry Dukes?
- 6 A That's correct.
- 7 Q You mentioned earlier that you processed the cellular
8 phone?
- 9 A That's right.
- 10 Q Were you able to do anything with that print?
- 11 A No.
- 12 Q Why not?
- 13 A It was of no value.
- 14 Q Were there also two partial prints developed from a
15 box of shotgun shells?
- 16 A Yes.
- 17 Q And which box of shotgun shells?
- 18 A That was the 100 count.
- 19 Q The 100 count. The big one?
- 20 A Yes.
- 21 Q And were you able to match any of those up?
- 22 A Yes. Those were made by Carlos Brown.
- 23 Q On another box of shotgun shells did you also develop
24 a fingerprint?
- 25 A Yes, I did.

1 Q And who did that match to?

2 A On the small, the 25-count box of shotgun shells, we
3 weren't able to conclusively say who it was made by.

4 Q And you're referring to item number 14.1?

5 A No. I'm sorry. That was from the -- that was from
6 the 100 count. And that was Carlos Brown. I
7 apologize. I misunderstood you.

8 Q Item 15.1 which was the 25-count --

9 MR. HISKER: Objection.

10 MS. CAMPBELL: What to?

11 MR. HISKER: Can we speak?

12 MS. CAMPBELL: Do you want to approach?

13 MR. HISKER: Can we approach?

14 THE COURT: Yes, sir.

15 (Whereupon, a bench conference is had)

16 Q I want to refer to your report. What was your
17 conclusion as you wrote it in your report?

18 A The conclusion was that L-15.1 could have been made
19 by the same source as the number 3 right middle
20 finger depicted on K-2, Middleton. However, due to a
21 lack of discernable individual characteristics, a
22 more definitive conclusion cannot be reached. The
23 latent was not made by the same source as any of the
24 fingers depicted on K-1, Scott, K-3, Dukes, K-6,
25 Roberts, or K-7, Brown.

1 Q So you're able to eliminate everyone except for
2 Middleton's?

3 A That's right.

4 Q But it wasn't good enough for you to call?

5 A That's right.

6 Q And that was on which shotgun shells?

7 A The 25-count, the smaller box.

8 Q For the record, that would be State's 173. And the
9 final set of -- item 16, which I've somehow misplaced
10 that page; there it is -- which was from where?

11 A That was made from -- that was taken from the SCU
12 card that was found outside the green truck.

13 Q Okay. And that's the property you were photographing
14 outside the green truck at the scene?

15 A That's right.

16 Q And were you able to do anything with that
17 fingerprint?

18 A Yes. I was able to determine it was made by
19 Mr. Huggins.

20 Q Whose I.D. card it was?

21 A Yes.

22 Q Beg the Court's indulgence. That's all I'd have.
23 Thank you very much.

24 THE COURT: Cross.

25 CROSS EXAMINATION

1 BY MR. HISKER

2 Q Hello, Investigator Collins.

3 A Hello.

4 Q You'd agree you did a very thorough investigation in
5 this case, correct?

6 A I tried to do everything I could. Yes.

7 Q How many swabs would you say that you collected in
8 total in this case? Just an estimate.

9 A I wouldn't even begin to know what that number was.
10 A lot.

11 Q More than 50?

12 A I don't think I took more than 50.

13 Q How about that you know of, that you know of in your
14 course of this investigation?

15 A I mean, I really couldn't -- I couldn't take a guess.
16 If you showed me the evidence sheets, I could count
17 them.

18 Q Right. But you'd agree it was a lot?

19 A Yes, sir.

20 Q And you swabbed every touchable surface in these
21 vehicles?

22 A Most of them. Yes.

23 Q And you looked for a lot of prints, too?

24 A Yes, sir.

25 Q Now, I want to ask about the inconclusive

- 1 fingerprint. You testified that you could not rule
2 out Mr. Middleton but you could rule out all the
3 other people that you had standards for, correct?
- 4 A That's right.
- 5 Q But it's not a conclusive test that it was Mr.
6 Middleton?
- 7 A That's right.
- 8 Q And the reason why it's not conclusive is because you
9 have a minimal level of standard for your ridge
10 detail, correct?
- 11 A There is no specific number, no. But you have to
12 have enough information to be able to make a good
13 conclusion.
- 14 Q And for you to be conclusive, it really has to
15 eliminate other members of the population, not just
16 the standards you have?
- 17 A I'm not sure I understand what you're saying.
- 18 Q Well, because you agree that people all generally
19 have the same style of fingerprint. There is looped
20 prints, correct?
- 21 A Right.
- 22 Q And so that one print could look like another print
23 if you don't have enough ridge detail?
- 24 A If you have a very small segment. Generally speaking
25 though, when I look at fingerprints, you're not just

1 looking at the characteristics that are present on
2 the fingerprints. You're also looking at the way the
3 ridges flow. So that's something else that we take
4 into account as well.

5 Q Right. But the reason you have that minimal
6 threshold for you to make a conclusive match is
7 because it could be several other thousands of people
8 in the population with that small amount of data?

9 A I don't think I would put it that way. I think that
10 in this case it was the fact that I didn't have
11 enough that I thought I could come to a jury with and
12 say this is what this is and be able to point it out
13 and prove it.

14 Q Did you process the hat that was found in the truck?

15 A For fingerprints?

16 Q For hairs.

17 A No, sir. I don't believe so.

18 Q But if you got a hair off of a hat, that would lead
19 to DNA?

20 A It could possibly. Yes.

21 Q And hairs are often left in hats in your experience,
22 correct?

23 A I don't have that much experience in looking.

24 Q You made conclusive proof that a Harry Dukes had his
25 hands on the green truck?

1 A That's right.

2 Q And you have conclusive proof that a Carlos McArthur
3 Brown had his fingerprints on the shotgun shells?

4 A On the box, yes.

5 Q Thank you. No further questions.

6 THE COURT: Redirect.

7 MS. CAMPBELL: Just one question.

8 REDIRECT EXAMINATION

9 BY MS. CAMPBELL

10 Q Did you see any hairs on any hats?

11 A No, ma'am.

12 Q Thank you.

13 THE COURT: You may come down, ma'am. Thank you
14 very much. Witness be excused? Without objection.
15 Approach the bench, counsel.

16 (Whereupon, a bench conference is had)

17 THE COURT: All right, Ladies and Gentlemen.
18 I'm just trying to get a schedule. I think we're
19 going to take our lunch break at this time. I know
20 we've only been in here a couple of hours, but I've
21 been in here four hours. So let's take our lunch
22 break at this time, reconvene at 2:00. I'll ask you
23 to be back in the jury room at 2:00. Have a pleasant
24 lunch. Again, don't discuss the case among
25 yourselves when you return to the jury room or with

1 anyone else over the lunch hour. See you at 2:00.

2 Thank you.

3 (Jury out at 12:54 p.m.)

4 **THE COURT:** All right. Captain Smith.

5 **MR. SMITH:** Yes, sir.

6 **THE COURT:** I haven't looked at this shotgun.
7 Is there a trigger lock or a hasp lock or anything on
8 that? Do you know?

9 **MR. SMITH:** No, sir. There doesn't appear to be
10 one now.

11 **THE COURT:** Sir?

12 **MR. SMITH:** There doesn't appear to be one at
13 this time.

14 **THE COURT:** Can we get one?

15 **MR. SMITH:** I can get one or I can secure it.

16 **THE COURT:** I just want it secured.

17 **MR. SMITH:** I can make sure it's secured if it's
18 all right before we leave the courtroom.

19 **THE COURT:** What you got, Jessie? You got
20 something?

21 **DEPUTY:** (Shakes head negatively).

22 **MR. SMITH:** We'd have to send to headquarters to
23 get a lock.

24 **THE COURT:** Ace just stood up. He's got a good
25 idea. I'm not sure if a trigger lock is the same on

1 a shotgun as a hasp lock.

2 **MR. SMITH:** If nothing else, we can use a flex

3 cuff.

4 **DEPUTY:** It will work, Your Honor.

5 **THE COURT:** Why not pull the bolt out of it or

6 something?

7 **DEPUTY:** If you've got a flex cuff, that will

8 work.

9 **THE COURT:** You can take the bolt out.

10 **MR. SMITH:** Your Honor, I'm not real familiar

11 with that.

12 **THE COURT:** I just want it secured.

13 **MR. SMITH:** Yes, sir.

14 **THE COURT:** All right. We'll stand at ease

15 until 2:00.

16 (Whereupon, a lunch break is taken)

17 (WHEREUPON, State's Exhibit No. 181 is marked

18 for identification.)

19 (WHEREUPON, State's Exhibit No. 182 is marked

20 for identification.)

21 **THE COURT:** The State ready to proceed?

22 **MS. CAMPBELL:** The State is ready.

23 **THE COURT:** Defense ready to proceed?

24 **MR. HISKER:** The defense is ready.

25 **THE COURT:** Bring the jury.

1 (Jury in at 2:10 p.m.)

2 **THE BAILIFF:** Your Honor, the jury is present.

3 **THE COURT:** Thank you very much. Ladies and
4 gentlemen, I hope you had a pleasant lunch. We're
5 now ready to continue with the trial. Solicitor,
6 call your next witness.

7 **MS. CAMPBELL:** May it please the Court. The
8 State would call Anna Clemons.

9 ANNA E. CLEMONS, after being duly sworn,
10 testifies as follows:

11 **THE CLERK:** Thank you. Please have a seat on
12 witness stand and state your full name for the
13 record.

14 **WITNESS:** Anna Elsie Clemons.

15 DIRECT EXAMINATION

16 **BY MS. CAMPBELL**

17 **Q** Lieutenant Clemons, where are you employed?

18 **A** The Richland County Sheriff's Department.

19 **Q** And what do you do there?

20 **A** I supervise the crime scene latent print sections.

21 **Q** Can you tell this jury a little bit about your
22 education and your training in the area of crime
23 scene investigation?

24 **A** Yes, ma'am. I graduated from the College of
25 Charleston in May of '95 with a Bachelor of Science

1 in Psychology and one in Biology in December of '95.
2 I attended the Criminal Justice Academy in July of
3 '96 and was certified as a class one officer. At
4 that time I worked the road for a little over two
5 years. I was then promoted to forensic investigator
6 in October of '98 and completed that in-house
7 training for crime scene investigators and have also
8 completed numerous external classes to include crime
9 scene construction, blood pattern analysis, crime
10 scene processing, processing fingerprints, latent
11 print comparisons, shoe print comparisons. And in
12 July of 2006 I just completed my Master's in Forensic
13 DNA Serology.

14 Q And you've been qualified before as an expert in
15 crime scene investigations?

16 A Yes, ma'am.

17 MS. CAMPBELL: Your Honor, at this time we'd
18 offer her as an expert.

19 THE COURT: Any Voir Dire, objection?

20 MR. HISKER: No objection.

21 MS. CAMPBELL: Your Honor, may we approach?

22 THE COURT: Yes, ma'am.

23 (Whereupon, a bench conference is had)

24 Q Lieutenant, did you attend an autopsy of a James
25 Greene I believe on August 9th, 2005?

1 A Yes, ma'am, I did.

2 Q And what was actually performing the autopsy that
3 day?

4 A Dr. Nichols.

5 Q What time was the autopsy performed?

6 A It started at 9:30 on the 9th of August.

7 Q And when you got there what did you observe as far as
8 the victim?

9 A A black male dressed in blue jeans, black shoes and a
10 white t-shirt with two prosthetic legs.

11 Q With two prosthetic legs?

12 A Yes, ma'am.

13 Q Did you note whether or not the victim's hands were
14 bagged?

15 A They were not.

16 Q And were you aware that a gunshot residue kit had
17 already been performed on that victim?

18 A Yes. I was advised by Investigator Collins that
19 Investigator Livingston had completed it on the scene
20 prior to transport.

21 Q Did you collect certain pieces of evidence while you
22 were there?

23 A I did. I completed nail scrapings on the victim's
24 hands. I collected hair samples, the victim's
25 clothing, fingerprints of the victim for elimination

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- 1 purposes, and I collected the pellets and waddings
2 that were collected by the doctor.
- 3 Q I'm sorry. I'm having a hard time hearing you. You
4 collected what?
- 5 A Pellets and waddings from the victim that were
6 initially collected by the doctor during the autopsy.
- 7 Q Did you get any information as far as the victim
8 information?
- 9 A In reference to height and weight type?
- 10 Q (Nods head affirmatively)
- 11 A He was 5-7 or 57 inches, 180 pounds, brown hair.
12 Correction. Brown eyes and salt and pepper hair.
- 13 Q And did you make any observations yourself about the
14 wounds?
- 15 A He had a hard contact wound to the right chest area.
16 Or close contact.
- 17 Q And during the course of the autopsy did you observe
18 any kind of trauma to the head area?
- 19 A I did. Once the autopsy began and the head area was
20 opened, we observed trauma to the left side of the
21 victim's head from blunt force trauma.
- 22 Q Did you actually take photographs of the autopsy? We
23 aren't going to put those in.
- 24 A I did.
- 25 Q And in addition to that, did you also have an

1 occasion that morning to observe an x-ray that was
2 done of the victim?

3 A Yes, ma'am, I did.

4 Q I'm going to show you two items. One has been marked
5 State's Exhibit 73 and one is 72. And see if you
6 recognize those.

7 A Yes, ma'am.

8 Q And did you actually -- and do those fairly and
9 accurately depict what you observed that morning?

10 A Yes, ma'am.

11 MS. CAMPBELL: Your Honor, at this time we'd
12 offer State's Exhibits 72 and 71 into evidence.

13 MR. HISKER: Without objection.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 71 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 72 is admitted
18 into evidence.)

19 Q And finally, in State's Exhibit No. 73, what does
20 that show?

21 A That's a photograph of the x-ray that was taken.

22 Q And I notice these little white dots all through what
23 appears to be the rib area?

24 A Those were the pellets that were collected by Dr.
25 Nichols.

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- 1 Q State's Exhibit No. 72, what does that show?
- 2 A That's the pellets that were collected from the torso
- 3 area of the victim and the wadding that was also
- 4 collect from that area by Dr. Nichols.
- 5 Q And once you collected these items -- well, let me
- 6 ask you this. Did you collect those items that day?
- 7 A I collected these items. Yes, I did.
- 8 Q And what did you then do with them?
- 9 A I entered them into evidence.
- 10 Q So they could be tested further on down the road?
- 11 A Correct.
- 12 Q And someone other than yourself would actually do
- 13 that testing. Is that correct?
- 14 A That's correct.
- 15 Q I believe the next day you also assisted Investigator
- 16 Collins at the crime scene?
- 17 A That was actually later that afternoon.
- 18 Q That afternoon. And she was the primary investigator
- 19 in that case though. Is that correct?
- 20 A That's correct.
- 21 Q Thank you. I don't have any further questions.
- 22 THE COURT: Mr. Hisker.
- 23 MR. HISKER: May it please the Court?
- 24 CROSS EXAMINATION
- 25 BY MR. HISKER

- 1 Q Good afternoon, Investigator Clemons.
- 2 A Good afternoon.
- 3 Q You described this as a hard contact wound?
- 4 A A close contact.
- 5 Q Close contact. And when a gun barrel was against his
- 6 skin, there's pressure in the wound. Is that your
- 7 understanding?
- 8 A It could be. My determination, what I wrote, was
- 9 what Dr. Nichols actually determines the wound to be
- 10 consistent with.
- 11 Q And in your experience, when there is that type of
- 12 wound, there's a phenomenon known as blowback. Is
- 13 that correct?
- 14 A There could be.
- 15 Q It's frequent in your experience that blood ejects
- 16 from the wound back towards the shooter?
- 17 A It depends on the type of weapon used, the distance
- 18 and the area that is actually shot on the body.
- 19 Q And it's very possible that blood would be back
- 20 towards the shooter?
- 21 A It could happen, but not always. It depends on
- 22 several circumstances. Yes, sir.
- 23 Q Thank you.
- 24 A Mm-hmm (affirmative).
- 25 THE COURT: Anything further?

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1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** You may come down. May this witness
3 be excused? Without objection. Next witness.

4 **MR. GOLDBERG:** The State calls Heather Ramos.
5 HEATHER RAMOS, after being duly sworn, testifies as
6 follows.

7 **THE CLERK:** Thank you. Please have a seat in
8 the witness stand and state your full name for the
9 record.

10 **WITNESS:** Heather Ramos.

11 DIRECT EXAMINATION

12 **BY MR. GOLDBERG**

13 **Q** Ms. Ramos, where are you employed?

14 **A** Sprint Nextel.

15 **Q** And where is your office located?

16 **A** Overland Park, Kansas.

17 **Q** How long have you been working for Sprint?

18 **A** Fourteen years.

19 **Q** What are your duties at Sprint?

20 **A** My title, my official is subpoena analyst, and part
21 of my duties I serve as custodian of records.

22 **Q** What exactly is a custodian of records?

23 **A** We assist in obtaining the documents and phone
24 records and all of our business records for Sprint
25 Nextel.

1 Q Okay. I want to show you what's been marked as
2 State's 181 and 182, just have you take a look at
3 those. Can you generally describe for us what those
4 documents are?

5 A Sure. These are call records from Sprint Nextel from
6 phone number [REDACTED] and subscriber information
7 for that name number.

8 Q And are those records that kept in the regular course
9 of business at Sprint?

10 A Yes, they are.

11 MR. GOLDBERG: Your Honor, at this time we would
12 move State's 181 and 182 into evidence.

13 MR. HISKER: Without objection.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 181 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 182 is admitted
18 into evidence.)

19 Q In regards to State's 182, if you could take a look
20 at that and describe in a little more detail what it
21 is?

22 A This is Sprint's Nextel subscriber information from
23 our mainframe. The subscriber for phone number
24 [REDACTED] is subscribed to Christopher Huggins.

25 Q And as for 181, what exactly is that as well?

- 1 **A** 181 is call records from [REDACTED] which includes
2 incoming and outgoing calls, the date and time the
3 calls were made, and the durations.
- 4 **Q** Does it tell you what the span of time is for those
5 particular records, the dates?
- 6 **A** Yes, it does. From 7-25-05 through 8-8 of '05.
- 7 **Q** And do you have a time for the last call on the log
8 on 8-8-05?
- 9 **A** The time for the last call was 21:26 and 58 seconds.
- 10 **Q** Say that again.. I'm sorry.
- 11 **A** Well, it would be 9:26 and 58 seconds.
- 12 **Q** And you said that Christopher Huggins was the name on
13 the account?
- 14 **A** Right. The actual account belongs to Felicia
15 Witherspoon. Mr. Huggins is a subscriber, has a line
16 subscribed to him on that same account.
- 17 **Q** On that same (954) number?
- 18 **A** Yes.
- 19 **Q** Okay. Thank you, ma'am.
- 20 **THE COURT:** Questions?
- 21 **MR. HISKER:** No questions.
- 22 **THE COURT:** All right. Thank you, ma'am. You
23 may come down. May the witness be excused? Without
24 objection.
- 25 **MS. CAMPBELL:** The state calls Deputy Hunger.

1 SCOTT HUNGER, after being duly sworn, testifies as
2 follows:

3 THE CLERK: Thank you. Please have a seat in
4 the witness stand and state your full name for the
5 record.

6 WITNESS: Scott Hunger.

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL

9 Q Where are you employed, sir?

10 A By the Richland County Sheriff's Department.

11 Q What do you do there?

12 A I am a deputy sheriff, patrol division.

13 Q I want to turn your attention back to August the 10th
14 of 2005. Did you have an occasion to respond to 511
15 Alcott Drive, building 17?

16 A Yes, ma'am.

17 Q Is that actually in your jurisdiction or the City's
18 jurisdiction?

19 A That's actually City jurisdiction.

20 Q And why were you responding over to Alcott Drive?

21 A In reference to a stolen vehicle that was stolen out
22 of the City jurisdiction. And that vehicle had, I
23 believe it was an NCIC hit which is National Crime
24 Information Center, that the vehicle was used in a
25 homicide in Richland County. Therefore, they needed

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- 1 a Richland County deputy to respond.
- 2 Q And when you got there, what City police officer did
- 3 you meet up with?
- 4 A That was Sergeant Laney of the City.
- 5 Q Sergeant Laney?
- 6 A Yes, ma'am.
- 7 Q Was the truck that you were looking for actually
- 8 there when you got there?
- 9 A Yes, ma'am.
- 10 Q And what was the tag number for the truck?
- 11 A The tag was [REDACTED]
- 12 Q So this was the actual tag number?
- 13 A Yes, ma'am.
- 14 Q What if any efforts did you make to make sure the car
- 15 was impounded so it could be processed later?
- 16 A As soon as I arrived on scene I stayed with the
- 17 vehicle the whole time until the tow truck arrived,
- 18 and also I followed the tow truck to our headquarters
- 19 and kept it in view the whole time until it was
- 20 turned over to the forensic unit for processing.
- 21 Q And that was all done I believe on August the 10th?
- 22 A Yes, ma'am.
- 23 Q Thank you, sir.
- 24 THE COURT: Any questions?
- 25 MR. HISKER: No questions.

1 **THE COURT:** You may come down. Thank you very
2 much.

3 **WITNESS:** Thank you.

4 **MS. CAMPBELL:** The State would call Gray Amick.

5 DR. GRAYSON AMICK, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Thank you. Please have a seat in
8 the witness stand and state your full name for the
9 record.

10 **WITNESS:** My name is Grayson Amick.

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Investigator Amick, where are you employed?

14 **A** Richland County Sheriff's Department.

15 **Q** And what do you do there, sir?

16 **A** I am the technical leader of the DNA laboratory.

17 **Q** Will you tell this jury a little bit about your
18 education and training in the field of DNA analysis?

19 **A** Yeah. I have a Bachelor of Science degree from 1989
20 followed by a Ph.D in biochemistry from the
21 University of South Carolina in 1993. I got hired at
22 the State Law Enforcement Division and worked there
23 for approximately 11 years. After that, in '04, I
24 was hired by the Sheriff's Department to start their
25 DNA laboratory. I've been involved in forensic DNA

Dr. Grayson Amick - Direct by Ms. Campbell

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1 conferences, continuing education for a number of
2 years; validation, method development for the last
3 ten years, and currently am the technical leader at
4 the DNA laboratory.

5 Q You've been qualified before as an expert in DNA
6 analysis?

7 A I have.

8 MS. CAMPBELL: Your Honor, at this time we'd
9 offer him as an expert in DNA analysis.

10 MR. HISKER: I stipulate.

11 Q In order to do DNA analysis you have to have certain
12 known samples provided to you?

13 A That's correct.

14 Q Can you tell this jury, how would a known sample be
15 collected from someone?

16 A There is a couple of ways. You can draw blood from
17 an individual. You could take what we call a buccal
18 swab which is a swab from the mouth. That is the two
19 most common ways to get a standard from an
20 individual.

21 Q And in this case you actually received buccal swabs
22 from three different individuals. Is that correct?

23 A That's correct.

24 Q And when you say buccal swabs, it's just like a
25 Q-tip?

1 A That's correct.

2 Q Okay. And when those are collected, basically, do
3 you just put the swab in their mouth?

4 A That's right.

5 Q And it collects the saliva?

6 A It collects your cells from the cheek and the gum
7 basically.

8 Q And you're able to use that later for analysis. Is
9 that correct?

10 A That's right. We can isolate the DNA from those
11 cells.

12 Q Who did you receive buccal swabs from in this case?

13 A I got a buccal swab from Octavia Middleton, a buccal
14 swab from Walter Huggins, and a buccal swab from
15 Jerry Gordon.

16 Q Jerry Gordon?

17 A Right.

18 Q Did you receive other additional known standards that
19 you used for comparison?

20 A I received a cigarette butt. That description was
21 cigarette butt from Teran Scott. So I was told to
22 use that as a standard for Teran Scott.

23 Q Okay. And of those people, who were the actual
24 suspects in the case?

25 MR. HISKEK: Objection.

1 **THE COURT:** Sustained.

2 **Q** So you had four known standards. Again, it would be

3 Octavia Middleton?

4 **A** Correct.

5 **Q** Teran Scott?

6 **A** Correct.

7 **Q** Walter Huggins and Jerry Gordon?

8 **A** That's correct.

9 **Q** And did you also receive some items that you did

10 testing on?

11 **A** I did.

12 **Q** And in this case there's been some talk about swabs

13 maybe taken from a car and things of that nature. As

14 a DNA analyst, what type of testing are you going to

15 do?

16 **A** Well, basically what we do is we take the evidence

17 from the crime scene, whether they're swabs or

18 cuttings, whether it's blood, saliva, semen,

19 depending on type of case, and we basically attempt

20 to get a DNA profile from those pieces of evidence,

21 DNA being unique to every individual except identical

22 twins, basically a molecular fingerprint. So we

23 attempt to get the DNA from those pieces of evidence.

24 And we may or may not have suspects or victims also

25 submitted to us as standards, and we attempt to get

1 profiles from those. And then we issue or offer
2 reports saying this piece of evidence matches this
3 individual or it doesn't match this individual,
4 things of that sort. So that's basically what
5 forensic DNA attempts to do.

6 Q And, say, if I go to a crime or I'm at a crime scene
7 and I touch things like this, am I necessarily going
8 to leave DNA?

9 A Not necessarily. You may or may not.

10 Q And why is that, sir?

11 A Well, it's kind of like, sometimes you'll hear
12 fingerprints being left the same way. It depends on
13 the oils in your skin. It depends on if you're
14 excited or not, adrenaline, whether you're sweating.
15 Those different factors affect whether you both
16 either could leave a fingerprint or could leave cells
17 or your DNA for touch evidence.

18 Q And typically, and you've mentioned before, that it's
19 kind of body fluids that are typically left at a
20 scene?

21 A That's correct. I mean, the most obvious biological
22 evidence is blood, semen and saliva. But we do also
23 analyze touch DNA evidence.

24 Q In this case did you meet with investigators to
25 determine what the most probative evidence would be?

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1 A In most of the big cases, homicide cases, we will
2 correspond with investigators to find out from the
3 evidence that's submitted what's the most probative
4 to run. Yes.

5 Q And as far as the crime scene, you never actually
6 went there yourself, did you?

7 A No, I did not.

8 Q Do you know even know how many victims were actually
9 bleeding at the crime scene?

10 A I do not. No.

11 Q Typically in a case, be it a rape or murder,
12 whatever, unless there is evidence -- evidence that
13 someone has been shot and left blood at the crime
14 scene is not necessarily probative as to the guilt of
15 the defendant?

16 A On a shooting scene, you know, that's something that
17 we will evaluate, whether or not we need to run it
18 with the investigators. Generally a shooting scene,
19 unless there is evidence or unless there is
20 information that the suspects were bleeding, we won't
21 run the blood that's obviously from the victim at the
22 scene where they got shot.

23 Q In this case you actually met with Investigator
24 Collins and looked at some shorts I believe?

25 A I did. Yes.

1 Q I'm going to show you what's in evidence actually as
2 State's Exhibit I believe it's 180. Yes. Do you
3 recognize those?

4 A They look like the white shorts that I have in my
5 notes, without opening them up.

6 MR. HISKER: Subject to my previous objection.

7 THE COURT: Yes, sir.

8 Q And there's some markings on that, small holes that
9 are cut in those shorts. How did that happen? Tell
10 the jury.

11 A Those shorts according to my case notes were brought
12 into my laboratory by Trish Collins, and in her
13 presence we looked at them. I processed them for the
14 presence of blood and made those cuttings for the
15 purposes of trying to get a DNA profile. And the
16 item numbers on this bag have the initials GA which
17 are my initials. So I made those cuttings for my
18 testing.

19 Q And how many cuttings total did you make that
20 appeared or may have been blood?

21 A It looks like four cuttings from those shorts.

22 Q In addition to that, did you also receive some nail
23 scrapings from the victim in the case, Mr. Greene?

24 A I did. Left and right hand fingernail scrapings.

25 Q Did you also receive a swab from a bedroom floor?

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- 1 A I did.
- 2 Q A swab from the front door?
- 3 A Yes.
- 4 Q And then a swab from the beer can. Is that correct?
- 5 A That's correct.
- 6 Q And when we're referring to the bedroom floor and the
- 7 front door, those were from the actual scene?
- 8 A I don't know. Crime scene, they'll generally collect
- 9 the evidence and submit it to me and we'll determine
- 10 what needs to be run. So I may or may not be
- 11 familiar with the scene or where something particular
- 12 is. Like I said, my job is basically to see if
- 13 there's a profile I can develop and then match it to
- 14 the suspects or victims.
- 15 Q I'm going to show you what's been marked as State's
- 16 Exhibit 169. Do you recognize those, swabs from a
- 17 beer can?
- 18 A I recognize the packaging with my initials and date.
- 19 But it's still sealed, so --
- 20 Q So that would be how you sealed it?
- 21 A But that's my initials and date and item number
- 22 63-TC.
- 23 Q And that was indicated in your report you tested it?
- 24 A That's correct.
- 25 Q First taking the cuttings, the four cuttings from the

1 white Dickie shorts, what were your conclusions as to
2 that?

3 A The DNA profile -- this was published in my report --
4 the DNA profile developed from item 4-GA which is one
5 of the cuttings from the shorts matches Octavia
6 Middleton. And the DNA profile developed from 1, 2
7 and 3-GA and 13-AC were too weak to interpret.

8 Q And when you're talking about the first three, you
9 referred to as the first three cuttings you took from
10 the shorts were too weak to interpret?

11 A That's correct.

12 Q And explain that in language I can understand.

13 A That means that there basically wasn't enough DNA to
14 get a full profile. So when I look at it, it's kind
15 of a partial DNA profile and it doesn't meet the
16 threshold where I can say it does match somebody or
17 doesn't match anybody, basically inconclusive
18 results.

19 Q Inconclusive?

20 A Mm-hmm (affirmative).

21 Q And as far as the fourth cutting that you took from
22 the pants, the white Dickie shorts?

23 A Yeah. The 4-GA which is the fourth cutting matched
24 Octavia Middleton.

25 Q Octavia Middleton?