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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

DAVID ROY LYNCH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001874

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	392
RETURN	399
POST-CONVICTION RELIEF HEARING TRANSCRIPT	405
ORDER OF DISMISSAL	492
INDICTMENTS	499

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 David Roy Lynch, a/a/a) 2005-GS-42-3565;3566
7 Roy David McDowell, Jr.,) 2006-GS-42-3826
8 Defendant.) January 8 - 10, 2007
9) Spartanburg, South Carolina
10

11 B E F O R E:
12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13

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22
23 Linda D. Moffitt
24 Circuit Court Reporter
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1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	JASON BRYANT (SW) In-camera	
4	Direct examination by Mr. Bulsa	49
5	Cross-examination by Mr. Robinson	55
6	DAVID TAYLOR (SW) In-camera	
7	Direct examination by Mr. Bulsa	58
8	Cross-examination by Mr. Robinson	60
9	Redirect examination by Mr. Bulsa	62
10	Recross-examination by Mr. Robinson	64
11	MIKE WOODCOCK (SW) In-camera	
12	Direct examination by Mr. Bulsa	84
13	Cross-examination by Mr. Robinson	88
14	LA CHANNET KELLY (SW)	
15	Direct examination by Mr. Bulsa	114
16	Cross-examination by Mr. Robinson	123
17	Redirect examination by Mr. Bulsa	123
18	PEGGY ANN DAVIS (SW)	
19	Direct examination by Mr. Bulsa	124
20	LEON YOUNG (SW)	
21	Direct examination by Mr. Bulsa	130
22	Cross-examination by Mr. Robinson -	137
23		
24		
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	ELIZABETH WHITESIDE (SW)	
4	Direct examination by Mr. Bulsa	139
5	Cross-examination by Mr. Robinson	144
6	Redirect examination by Mr. Bulsa	146
7	BOYCE WHITESIDE (SW)	
8	Direct examination by Mr. Bulsa	151
9	JAMES ANTHONY SMITH (SW)	
10	Direct examination by Mr. Bulsa	158
11	Cross-examination by Mr. Robinson	163
12	Redirect examination by Mr. Bulsa	166
13	MATT WILDE (SW)	
14	Direct examination by Mr. Bulsa	167
15	RANDALL EUGENE BOGAN (SW)	
16	Direct examination by Mr. Bulsa	170
17	Cross-examination by Mr. Robinson	190
18	JACK CHRISTOPHER DURHAM (SW)	
19	Direct examination by Mr. Bulsa	193
20	DAVID TAYLOR (SW)	
21	Direct examination by Mr. Bulsa	198
22	Cross-examination by Mr. Robinson	208
23		
24		
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	MARGARET ALICIA LEMKE (SW)	
4	Direct examination by Mr. Bulsa	212
5	Cross-examination by Mr. Robinson	243
6	Redirect examination by Mr. Bulsa	255
7	KELLY OLIVER (SW)	
8	Direct examination by Mr. Bulsa	258
9	Cross-examination by Mr. Robinson	262
10	JASON BRYANT (SW)	
11	Direct examination by Mr. Bulsa	264
12	Cross-examination by Mr. Robinson	272
13	DAVID TAYLOR (SW)	
14	Direct examination by Mr. Bulsa	276
15	Cross-examination by Mr. Robinson	279
16	Redirect examination by Mr. Bulsa	281
17	TYRONE SMITH (SW)	
18	Direct examination by Mr. Bulsa	282
19	Cross-examination by Mr. Robinson (In-camera)	288
20	Continued direct examination by Mr. Bulsa	289
21	Cross-examination by Mr. Robinson	290
22	Redirect examination by Mr. Bulsa	293
23	STEVE WILSON (SW)	
24	Direct examination by Mr. Bulsa	294
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	KENNETH H. WHITLER (SW)	
4	Direct examination by Mr. Bulsa	296
5	MICHAEL WOODCOCK (SW)	
6	Direct examination by Mr. Bulsa	305
7	Cross-examination by Mr. Robinson	309
8	Redirect examination by Mr. Bulsa	310
9	DR. JOHN DAVID WREN (SW)	
10	Direct examination by Mr. Bulsa	313
11		
12	Jury qualification	11
13	Jury sworn	99
14	Opening statements	107
15	Closing arguments	327
16	Jury charge	349
17	Verdict	385
18	Sentence	387
19	Certificate	391
20		
21		
22		
23		
24		
25		

	<u>EXHIBITS</u>		
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-1	Preinterrogation waiver form	49 201
4	S-2	Statement dated 11/7/05	49
5	S-3	Map	62 204
6	S-4	Rights form	84 306
7	S-5	Video	85
8	S-6	Photograph	131
9	S-7	Aerial photograph	221
10	S-8	Photograph	152
11	S-9	Photograph	152
12	S-10	Photograph	152
13	S-11	Photograph	152
14	S-12	Photograph	152
15	S-13	Photograph	174
16	S-14	Photograph	174
17	S-15	Photograph	179
18	S-16	Photograph	152
19	S-17	Photograph	152
20	S-18	Photograph	175
21	S-19	Photograph	175
22	S-20	Photograph	175
23	S-21	Photograph	175
24	S-22	Diagram	172
25	S-23	List	176 177

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-24	Photograph		179
4	S-25	Photograph		179
5	S-26	Photograph		179
6	S-27	Photograph		179
7	S-28	Photograph		179
8	S-29	Shell casings	184	300
9	S-30	Bullet fragments	188	300
10	S-31	Bullet	194	300
11	S-32	Bullet	196	300
12	S-33	Photograph	270	277
13	S-34	Photograph	270	277
14	S-35	Photograph	270	277
15	S-36	Photograph	270	277
16	S-37	Photograph	270	277
17	S-38	Photograph	270	277
18	S-39	Pistol	286	301
19				
20				
21				
22				
23				
24				
25				

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-1	Video (S-5)	149	
4	D-2	Letter	149	
5	D-3	Letter	149	
6	D-4	Letter	149	
7	D-5	Letter	149	
8	D-6	Letter	149	
9	D-7	Letter	149	
10	D-8	Letter	149	
11	D-9	Letter	149	
12	D-10	Letter	149	
13	D-11	Letter	149	
14	D-12	Letter	149	
15	D-13	Letter	149	
16	D-14	Letter	149	
17	D-15	Letter	149	
18	D-16	Letter	244	
19	D-17	Letter	244	
20				
21				
22				
23				
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Question from the jury		385

1 (Proceedings January 8, 2007)

2 THE COURT: All right. Any matters to address before
3 we bring the jury panel around?

4 MR. BULSA: Your Honor, the defendant was directly
5 indicted on armed robbery, Indictment 06-3826. I believe
6 he's waiving arraignment on that indictment.

7 MR. ROBINSON: That's correct, Your Honor.

8 THE COURT: Okay. Now, I notice, and I've been told,
9 that there's some discrepancy about the name of the
10 defendant.

11 He was indicted as David Roy -- David Roy Lynch. And
12 Mr. Robinson has indicated that he knows him as David Roy
13 McDowell.

14 I don't -- is it the state's position that this is the
15 name that was provided them at the time of the arrest and
16 booking and that sort of thing?

17 They're not going to be able to sit on that row.

18 MR. BULSA: Your Honor, the arrest warrant was for
19 David Lynch, and on his criminal history he has both names
20 listed as identifiers.

21 THE COURT: Well, I guess the only thing I know to do
22 is introduce him as David Roy Lynch, also known as David
23 Roy McDowell, Jr.

24 MR. ROBINSON: Your Honor, I just talked with my
25 client, and just I want to make sure I clarify this.

Jury qualification

1 Actually, it's Roy David McDowell, Jr. That's what
2 the name is. His father is in this courtroom. He's the
3 senior. If I can explain the Lynch -- Lynch is the name of
4 his brother.

5 THE COURT: Well, he must have used it at some point,
6 I assume.

7 MR. ROBINSON: I think he may have used it at some
8 point years ago.

9 THE COURT: Okay. All right. Well, David Roy Lynch,
10 also known as David Roy McDowell, Jr. How about that?

11 All right. Any other matters to address before the
12 jury is brought in?

13 MR. BULSA: Not by the state, Your Honor.

14 MR. ROBINSON: Not from the defense, Your Honor.

15 THE COURT: Okay. Bring them around, please.

16 Where did this incident allegedly occur?

17 MR. BULSA: Sunnyglen in the Greer community.

18 THE COURT: Sunnyglen Drive?

19 MR. BULSA: Yes, sir.

20 (The following takes place in the presence of the jury
21 venire.)

22 THE COURT: Good morning, ladies and gentlemen of the
23 jury panel.

24 My name is Derham Cole. I'm a resident judge here in
25 the 7th Circuit and along with Judge Hayes will be --

Jury qualification

1 again, my name is Derham Cole. I'm a resident judge here
2 in the 7th Circuit. I'll be presiding over a term of
3 general sessions court, as Judge Hayes is next door.

4 The first case that we have that's going to require
5 the participation of some of you jurors is the case of the
6 State vs. David Roy Lynch.

7 Mr. Lynch also has gone by the name of Roy David
8 McDowell, Jr. But he is the person who is accused of the
9 crimes that the state has brought today by way of three
10 indictments.

11 Those indictments allege that David Roy Lynch did on
12 or about December the 30th of 2004 commit three separate
13 and distinct criminal offenses, although they are alleged
14 to have arisen out of one particular event or occurrence
15 that the state alleges did occur on December the 30th of
16 2004.

17 But by way of these indictments the state claims that
18 Mr. Lynch committed the crime of armed robbery in that he
19 did on or about December the 30th of 2004 commit a robbery
20 of one Lee Evans while he was armed with a deadly weapon,
21 that weapon being a pistol.

22 They also, the state also, alleges that the defendant
23 did on or about December the 30th of 2004 commit an assault
24 and battery upon one Leon Young accompanied with malice
25 aforethought. And they allege that he shot Mr. Young with

Jury qualification

1 the intent to kill him, that alleging the crime of assault
2 and battery.

3 And further they allege in the third indictment that
4 the defendant did here in Spartanburg County on or about
5 December the 30th of 2004 wilfully and with malice
6 aforethought kill one Lee Evans by shooting Mr. Evans with
7 a deadly weapon, and that he died as a proximate result of
8 that gunshot wound.

9 Now, as to those indictments and as to the allegations
10 contained therein the defendant has entered a plea of not
11 guilty. And a plea of not guilty places upon the state,
12 that is the prosecutor or the solicitor, the burden of
13 proving all of the allegations that they have set forth in
14 each of those indictments, the burden of proving each of
15 the essential elements that under the law constitute the
16 crimes of murder, assault and battery with intent to kill
17 and armed robbery; and therefore the burden is upon the
18 state to establish the defendant's guilt to the
19 satisfaction of 12 jurors beyond a reasonable doubt before
20 any verdict of guilty could be returned as to a particular
21 charge.

22 And therefore we are going to be selecting 13 of you.
23 There'll be 12 primary jurors and one additional alternate
24 juror. You're going to be called upon by way of your
25 participation to listen to testimony that will be brought

Jury qualification

1 out from witnesses taking the witness stand and to consider
2 any other evidence that is introduced during the trial of
3 the case.

4 At the trial's conclusion you'll consider all of that
5 evidence. From that evidence you'll decide the facts, that
6 is you'll determine what, if anything, you believe occurred
7 back on December the 30th of 2004 as it relates to these
8 particular charges.

9 And then once you decide those facts, you will apply
10 the law that I will provide you during the course of the
11 trial. And you will determine whether or not the
12 defendant's guilt has been proven beyond a reasonable doubt
13 as to a particular charge. And if it has, then your
14 verdict would be guilty; and if it has not, then your
15 verdict would be not guilty.

16 Now, before we can begin with jury selection I've got
17 some questions that I'm going to be asking you as a group.
18 The purpose of these questions is to determine whether or
19 not there's a reason why any one of you jurors should not
20 be selected to participate in the trial of this particular
21 case.

22 So as these questions are asked of you, if you need to
23 respond to them, I'm going to ask that you please stand.
24 And I'll address those matters with you individually in the
25 event that should become necessary.

Jury qualification

1 Now, first of all, as I told you, the defendant, that
2 is the person who has been accused by the state of having
3 committed these crimes of murder, assault and battery with
4 intent to kill and armed robbery, is David Roy Lynch, also
5 known as Roy David McDowell; Jr.

6 Mr. Lynch, I'm going to ask if you'll please stand and
7 face the jury panel.

8 (Whereupon, the defendant and Mr. Robinson stood.)

9 THE COURT: Mr. Lynch will be the person standing to
10 your left, and Mr. Robinson is the person who just sat
11 down. He's now standing -- to your right.

12 Mr. Robinson, Scott Robinson, is Mr. Lynch's lawyer.
13 He'll be assisting him in the trial of this case.

14 Thank you, be seated.

15 In this case one of the persons which is alleged to
16 have been a victim of these incidents is Leon young.

17 Is Mr. Young present?

18 Mr. Young, if you will, please stand and face the jury
19 panel, please, sir.

20 (Whereupon, the victim stood.)

21 THE COURT: Thank you. You may be seated.

22 The other individual alleged to be the victim is one
23 Lee Evans. He is deceased.

24 Is there some member of his family present?

25 MR. BULSA: Yes, sir. Peggy Davis.

Jury qualification

1 (Whereupon, Peggy Davis stood.)

2 THE COURT: All right. Ms. Davis, if you will, please
3 stand.

4 She is what relation to Mr. Evans?

5 MR. BULSA: Grandmother.

6 THE COURT: All right. This is Peggy Davis, and she's
7 Mr. Evans' grandmother. She's standing because she might
8 be a witness, but also so that you can perhaps identify
9 whether or not you know Mr. Evans.

10 In this case the state is represented by Derrick Bulsa
11 and Sarah Ganss, both assistant solicitors for the
12 7th Judicial Circuit. They'll be presenting the case on
13 behalf of the state.

14 (Whereupon, Mr. Bulsa and Ms. Ganss stood.)

15 THE COURT: Is there any member of the jury panel who
16 is related by blood or who is connected by marriage or who
17 has any other personal, social, professional or any type of
18 connection with the defendant, the two persons alleged to
19 be the victims, as well as the lawyers involved in the
20 trial of the case?

21 Does any juror have any connection with any of those
22 persons who have just been introduced for your benefit? If
23 so, I'll ask that you please stand. And as you stand, I'll
24 ask if you'll please identify yourself and tell me your
25 juror number if you recall it.

Jury qualification

1 JUROR NO. 109: Twyla McDaniel, Juror 109. I'm
2 familiar with Peggy Davis.

3 THE COURT: All right. And how do you know Ms. Davis?

4 JUROR NO. 109: She is a member of our church.

5 THE COURT: All right. And would that fact or that
6 connection in any way impair your ability to be fair and
7 impartial if you were selected to serve as a juror in this
8 case?

9 JUROR NO. 109: I'd rather be transferred, because I
10 did teach Mr. Evans also in Sunday school.

11 THE COURT: Okay. Well, would the answer to my
12 question be yes?

13 JUROR NO. 109: Yes.

14 THE COURT: That you think your connection with the
15 family would impair your ability to be fair?

16 JUROR NO. 109: Yes, sir.

17 THE COURT: All right. We'll excuse you from service
18 in this case, but don't leave yet, please, ma'am.

19 Okay. Anyone else know either the defendant or either
20 of the two persons alleged to be the victim or any members
21 of their respective families, and the lawyers?

22 Anyone else?

23 JUROR NO. 16: Juror No. 16.

24 THE COURT: And your name is what?

25 JUROR NO. 16: David Bruce.

Jury qualification

1 THE COURT: All right.

2 JUROR NO. 16: I have been a patron of the --

3 THE COURT: You've been a what?

4 JUROR NO. 16: I eat at her restaurant.

5 MR. BULSA: Ms. Davis owns a restaurant.

6 THE COURT: All right. Ms. Davis has a restaurant and
7 you've been there. You're a customer.

8 JUROR NO. 16: Yes, sir.

9 THE COURT: Okay. Would that fact have any bearing
10 upon your decision in this case?

11 JUROR NO. 16: No, sir.

12 THE COURT: Could you be fair and impartial to both
13 sides, notwithstanding that fact?

14 JUROR NO. 16: Yes, sir.

15 THE COURT: All right. Thank you. You may be seated.
16 Anyone else?

17 (No response.)

18 THE COURT: I'm going to recite a list of potential
19 witnesses.

20 Now, all of these people may not be called to testify,
21 but they have some knowledge about some fact that's
22 involved in this case perhaps, and therefore they are
23 potential witnesses, whether they actually testify or not.
24 But I'm going to recite a list of the entire potential
25 witness list.

Jury qualification

1 I need again to find out whether or not any juror
2 knows any of these potential witnesses. So if you do, as
3 the name is called, I'm going to ask that you please stand
4 and remain standing until I recite the list.

5 Afterwards I'll inquire of any standing juror as to
6 what person you know and what connection you have and how
7 that would affect your judgment in the case.

8 So in addition to those who have already been
9 identified we also have Wendy -- Wendy Alley, Randy Bogan,
10 Jason Bryant, Jason Butler, Steve Cooper, Peggy Davis who
11 has already been identified, Darrin Dukes, Chris Durham.
12 You can sit down once you've stood.

13 Margaret Greer, Jessica Nicole Holmes, La Channet
14 Kelly, Margaret Alicia Lemke, Hugh Murphy, Mack Murphy,
15 Kelly Oliver, Martena Parks, Robert Rosenburg, Anthony
16 Smith, Travis Stone, David Taylor, David Weatherspoon,
17 Boyce Whiteside, Elizabeth Whiteside, Ken Whitler, Matt
18 Wilde, Allen Wood, Mike Woodcock, David Wren, Leon Young,
19 Dan Defreeze, Mark Gaddy, Barry Hamby, Tyrone Smith, Steve
20 Wilson, Nicole Wingo, Kimberly Hahn, Patti Ruff, Alfred
21 Stuckey, Hue Tang, Ashley Dawkins, Elinore Hughey. And
22 that appears to be all of the potential witnesses.

23 Does any juror know any of those persons who have just
24 been identified? If so, please stand.

25 All right. I'm going to start over here. If you will

Jury qualification

1 give me your name and your juror number, tell me who you
2 believe you know.

3 JUROR NO. 156: Elaine Taylor, 156. And I am related
4 to David Taylor.

5 THE COURT: All right. And how are you related to
6 David Taylor?

7 JUROR NO. 156: He's my husband's nephew.

8 THE COURT: He's your husband's nephew?

9 JUROR NO. 156: Uh-huh.

10 THE COURT: Would that have any bearing whatsoever
11 upon your decision in this case if you were selected as a
12 juror?

13 JUROR NO. 156: No.

14 THE COURT: It would not?

15 JUROR NO. 156: No.

16 THE COURT: Okay. Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 59: I know Allen Wood.

19 THE COURT: All right. Tell me your name and number,
20 please.

21 JUROR NO. 59: Fifty-nine.

22 THE COURT: And how do you know Mr. Wood?

23 JUROR NO. 59: I babysat for him.

24 THE COURT: For him?

25 JUROR NO. 59: When he was a little boy. It wouldn't

Jury qualification

1 affect anything.

2 THE COURT: You didn't want to admit that, did you?

3 JUROR NO. 59: Well, no, because he looks older than I
4 do.

5 THE COURT: All right. Would that have any bearing
6 upon your decision?

7 JUROR NO. 59: No, sir.

8 THE COURT: Okay. Thank you. You may be seated.

9 Yes, sir.

10 JUROR NO. 55: I am Juror No. 55. My name is Dennis
11 Goff. I'm familiar with the name of Tyrone Smith and the
12 gentleman sitting over -- sitting right over, over there.

13 THE COURT: All right. Is Tyrone Smith present?

14 MR. BULSA: Not in the courtroom.

15 THE COURT: He's not in the courtroom. Tyrone Smith's
16 not.

17 Now, we can try to narrow it down. Which Tyrone Smith
18 is this?

19 MR. BULSA: He's a black male.

20 THE COURT: Who lives where?

21 MR. BULSA: Wofford Street address in Spartanburg.
22 He's about 20 years old.

23 THE COURT: Tryon Smith lives on Wofford Street in
24 Spartanburg. He's about 20 years old. Is that the one you
25 know?

Jury qualification

1 JUROR NO. 55: I don't believe that's the, that's the
2 one.

3 THE COURT: All right. You indicated you knew one of
4 the folks sitting over here?

5 JUROR NO. 55: The gentleman over there.

6 THE COURT: All right. Who is that gentleman?

7 WILLIAM DAVIS: William Davis. Lee Evans' nephew.

8 THE COURT: William Davis?

9 WILLIAM DAVIS: Yes, sir. He's my nephew.

10 THE COURT: And you're related to Ms. Davis sitting
11 next to you?

12 WILLIAM DAVIS: That's my mother.

13 THE COURT: Okay. You know Mr. Davis?

14 JUROR NO. 55: I do.

15 THE COURT: How do you know him?

16 JUROR NO. 55: He used to work together at Milliken.

17 THE COURT: All right. Would that have any bearing
18 upon your decision in this case?

19 JUROR NO. 55: I don't believe so.

20 THE COURT: Okay. Thank you. Be seated.

21 MR. ROBINSON: May it please the Court, Your Honor.

22 THE COURT: Yes.

23 MR. ROBINSON: What juror number is that?

24 THE COURT: Fifty-five.

25 Anyone else need to respond to the question of having

Jury qualification

1 some connection or knowledge of any potential witness?

2 Yes, ma'am.

3 JUROR NO. 193: Juror 193. Did you say Kelly Oliver
4 or Alderman?

5 MR. BULSA: It's Oliver.

6 THE COURT: Kelly Oliver. And Kelly Oliver is, what,
7 is male or female?

8 MR. BULSA: She's a lady.

9 THE COURT: From where?

10 MR. BULSA: Wellford area. She's in her late 30's
11 probably.

12 THE COURT: That's the one. How do you know.
13 Ms. Oliver?

14 JUROR NO. 193: She dated one of my employees.

15 THE COURT: Okay.

16 JUROR NO. 193: And just from coming in and out of
17 contact there, their coming in to see him.

18 THE COURT: Coming in and out of contact where?

19 JUROR NO. 193: And she lives probably about 2 miles
20 from me.

21 THE COURT: Okay.

22 JUROR NO. 193: If that's the same one and --

23 THE COURT: And you said coming in and out of where?

24 JUROR NO. 193: My husband and I own a business, E & G
25 Machine Shop.

Jury qualification

1 THE COURT: Okay.

2 JUROR NO. 193: And she come back and forth to see
3 him.

4 THE COURT: All right. Would that have any bearing
5 upon your decision in this case if you were selected as a
6 juror?

7 JUROR NO. 193: No, sir.

8 THE COURT: All right. Thank you. Be seated.
9 That's 193.

10 Yes, sir.

11 JUROR NO. 184: James Mabry, 184. Allen Wood is my
12 second or third cousin, cousins. Do you remember me?
13 Well, I know your brother. I owned the old Cadillac with a
14 stripe.

15 THE COURT: Okay. Well, would that fact have any
16 bearing upon your decision in this case?

17 JUROR NO. 184: No.

18 THE COURT: All right. Thank you. Be seated. And
19 you're 184?

20 JUROR NO. 184: Yes, sir.

21 THE COURT: Anyone else?

22 (No response.)

23 THE COURT: All right. As I told you, this is an
24 event that the state alleges occurred on or about December
25 the 30th of 2004. And it is alleged to have occurred at a

Jury qualification

1 location on Sunnyside Drive in the Greer community of
2 Spartanburg County. And, as I say, the two persons alleged
3 to be the victims are Lee Evans and Leon Young.

4 Is there any member of the jury panel who believes you
5 have heard, seen or read about something that might relate
6 to this particular case? That is have you gotten any
7 information about this case from any source? If so, please
8 stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel or
11 any member of any of your immediate families -- and let me
12 define an immediate family member as a spouse or a parent
13 or a child or a sibling -- a spouse, a parent, a child or a
14 sibling.

15 Have you as a juror or any members of your immediate
16 families ever been the victim of any type of violent crime?
17 And included in those, in that classification, would be
18 murder, manslaughter, armed robbery, kidnapping, burglary,
19 criminal sexual conduct or any other similar type of an
20 offense. Have any of you or a family member ever been the
21 victim of any type of violent crime? If so, please stand.

22 All right. Now, I've got four jurors standing. Is
23 that everybody that needs to respond to that question?
24 I've got five. Anybody else?

25 All right. I'm going to start on the front. I'll

Jury qualification

1 work my way back if you'll give me your name and your juror
2 number.

3 JUROR NO. 193: Rona Edge, No. 193.

4 THE COURT: All right. And let me say if you don't
5 want to tell me about it from where you are, you can come
6 down here. I'll leave that up to you. Stay where you are
7 or come down here.

8 JUROR NO. 193: It was the county. It was Paul
9 Cleveland Smith, Jr. in 1993. He killed his wife and shot
10 me.

11 THE COURT: Okay. And would that personal experience
12 have any bearing upon your decision in this case?

13 JUROR NO. 193: Yes, sir.

14 THE COURT: It would?

15 JUROR NO. 193: Yes, sir.

16 THE COURT: All right. We'll excuse Juror 193 from
17 service in the case.

18 But don't leave yet.

19 All right. Next.

20 JUROR NO. 93: My name is Dana Loftis. Ninety-three
21 is the juror number. My mama was robbed from a Wilco that
22 she was working there one night. And the guy come in and
23 robbed her at gunpoint.

24 THE COURT: She was robbed where?

25 JUROR NO. 93: She was robbed at a Wilco at gunpoint.

Jury qualification

1 THE COURT: Okay. Would that fact have any bearing
2 upon your decision in this case?

3 JUROR NO. 93: No.

4 THE COURT: All right. Thank you. You may be seated.
5 Yes, ma'am. Either one.

6 JUROR NO. 59: My husband's brother got in some
7 trouble. And I don't know what he's got against him, but
8 he's got something against him.

9 THE COURT: Do you mean he's got a charge against him?

10 JUROR NO. 59: Yes, sir.

11 THE COURT: Okay. And you're Juror No. 59?

12 JUROR NO. 59: Fifty-nine.

13 THE COURT: Would that have any bearing upon your
14 decision in this case?

15 JUROR NO. 59: No, sir.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 174: 174. Hope Wolfe. My father was shot
19 during a robbery in 1990.

20 THE COURT: All right. Would that have any bearing
21 upon your decision in this case?

22 JUROR NO. 174: I don't believe so.

23 THE COURT: All right. Thank you. Be seated.

24 Yes, sir.

25 JUROR NO. 179: 179 Christopher Burdette. My mother

Jury qualification

1 was raped and beaten in Kansas City. I don't think it
2 would have any bearing on my decision.

3 THE COURT: It wouldn't have any bearing upon your
4 decision in this case?

5 JUROR NO. 179: No, sir.

6 THE COURT: Okay. Thank. Be seated.

7 Is there any member of the jury panel who is connected
8 by blood or marriage to any law enforcement officer, or are
9 you or have you ever been a law enforcement officer
10 yourself?

11 So have you ever been a law enforcement officer or do
12 you have a family member who has been or is now any type of
13 law enforcement officer? If so, please stand. Everybody
14 understand what I mean by a law enforcement officer?

15 JUROR NO. 184: My cousin wouldn't --

16 THE COURT: Yes, sir. Any, any connection whatsoever.
17 Everybody standing that needs to respond?

18 All right. I'll start over here with Ms. Taylor.
19 You're Juror 156.

20 JUROR NO. 156: Right. And I'm by marriage related to
21 David Taylor.

22 THE COURT: Okay. And it would not affect your
23 judgment?

24 JUROR NO. 156: No.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 And you are 184?

2 JUROR NO. 184: Yes, sir.

3 THE COURT: And you're related to Mr. Wood.

4 JUROR NO. 184: That's my second cousin, I think.

5 THE COURT: All right. Any others?

6 JUROR NO. 184: I don't think so.

7 THE COURT: Would it have any bearing upon your
8 decision in this case?

9 JUROR NO. 184: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 174: My juror number is 174. My father was
13 a city police officer for seven or eight years when I was
14 growing up.

15 THE COURT: In Spartanburg?

16 JUROR NO. 174: Yes, sir. He's not now. And my
17 brother-in-law was also a city police officer but now is in
18 Virginia.

19 THE COURT: Would that make any difference to you in
20 this case?

21 JUROR NO. 174: No.

22 THE COURT: Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 170: No. 170. My brother-in-law is a
25 police officer in Massachusetts. And it wouldn't make any

Jury qualification

1 difference to me.

2 THE COURT: Thank you. Be seated.

3 Yes, sir.

4 JUROR NO. 1: Juror No. 1. I was a U. S. Army
5 military police in the late 60's.

6 THE COURT: Would it have been any bearing upon your
7 decision today?

8 JUROR NO. 1: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, ma'am.

11 JUROR NO. 69: Sixty-nine. I have a brother-in-law
12 and two nephews that are in law enforcement. It won't have
13 any bearing.

14 THE COURT: Thank you. Be seated.

15 Yes, sir.

16 JUROR NO. 132: 132. I have an uncle that's a highway
17 patrol, retired. It wouldn't make any difference.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 195: Got two nephews that are part-time
21 policeman.

22 THE COURT: And you are?

23 JUROR NO. 195: Juror 195.

24 THE COURT: Would that have any bearing upon your
25 decision?

Jury qualification

1 JUROR NO. 195: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 147: 147. My son is a correctional officer
5 for the county, and it wouldn't make any difference.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 205: 205. My nephew by marriage is a
9 Spartanburg County cop, and it wouldn't make any
10 difference.

11 THE COURT: And his name is what?

12 JUROR NO. 205: Brad Wall.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 161: 161. My uncle was a sheriff's deputy
16 and is now a magistrate court judge, but it wouldn't have
17 any bearing.

18 THE COURT: Who would that be?

19 JUROR NO. 161: Carl Easley.

20 THE COURT: All right. Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 154: 154. My sister's fiance is a
23 volunteer police officer in Lyman.

24 THE COURT: Would that have any bearing upon your
25 decision?

Jury qualification

1 JUROR NO. 154: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 5: Juror No. 5. My cousin, Randy Hardy,
5 Captain Randy Hardy.

6 THE COURT: Would that have any bearing upon your
7 decision in this case?

8 JUROR NO. 5: No, sir.

9 THE COURT: Thank you. Be seated.

10 JUROR NO. 202: 202. I used to work for the
11 Greenville County Detention Center and the Spartanburg
12 County Detention Center. I have several family members who
13 are police officers now.

14 THE COURT: Would that have any bearing upon your
15 decision?

16 JUROR NO. 202: No, sir.

17 THE COURT: Thank you. Be seated.

18 Is there any member of the jury panel who is a member
19 of or contributes time or money to any types of
20 organizations that might be described or characterized as
21 law enforcement support types of organizations or victims
22 rights types of organizations?

23 Those would include Mothers Against Drunk Drivers,
24 Citizens Against Violent Crime, any type of neighborhood
25 watch association, honorary sheriffs' association,

Jury qualification

1 fraternal order of police; troopers association or any type
2 of organization that would be described as supporting law
3 enforcement or any type of victims rights organization.

4 If so, please stand. If you are a member of or you
5 contribute time or money to such an organization. If so,
6 please stand.

7 Yes, sir.

8 JUROR NO. 180: Juror 180. We contribute to the
9 sheriff's office for some of the functions.

10 THE COURT: Okay. Thank you. Be seated.

11 Anybody else?

12 (No response.)

13 THE COURT: During the course of this trial -- and I
14 don't know what all the evidence is going to be that's
15 going to be introduced during the trial of the case, and I
16 don't know what all the case is about except for basic
17 facts. But during the course of this trial there may be
18 some testimony that will come from a witness regarding the
19 sale or purchase of illegal drugs.

20 Now, if that happens or if that were to occur or if
21 there was evidence of such a fact, would that interfere --
22 I mean do you have such an opinion about the use or
23 consumption or sale or purchase of illegal drugs that that
24 would affect your judgment to the extent that you could not
25 be fair and impartial to both sides in this case just based

Jury qualification

1 upon that fact? If so, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel already
4 formed an opinion as to what you think the ultimate outcome
5 ought to be based upon what you've heard up to this point
6 or based upon any other consideration? Anyone already made
7 up your mind? If so, please stand.

8 (No response.)

9 THE COURT: I see some people smiling. But, believe
10 it or not, I have people stand up in response to that
11 question.

12 Does any juror know of any reason whatsoever why you
13 think you could not be fair and impartial if you were
14 called upon to serve as a juror in the case? And you won't
15 have to state the reason out loud. You can come down here
16 if you want to. But does anybody have a reason why you
17 think you could not be fair in the case?

18 All right. And you were Juror 161.

19 JUROR NO. 161: 161, yes, sir.

20 THE COURT: And you do have a reason why you think you
21 could not be fair and impartial to one side or the other?

22 JUROR NO. 161: It is possible, yes.

23 THE COURT: And you could not put that fact aside and
24 not allow it to influence your decision?

25 JUROR NO. 161: May I share it with you?

Jury qualification

1 THE COURT: If you'll come down here, you may.

2 (Bench conference held off the record with Juror No.
3 161.)

4 THE COURT: Ladies and gentlemen, I have got one other
5 question.

6 Is there any member of the jury panel who has ever
7 been, that is you or a family member has ever been,
8 prosecuted by the 7th Judicial Circuit Solicitor's Office?
9 You or a family member ever had a case brought against you
10 and it was handled or pursued by the circuit solicitor's
11 office? If so, please stand.

12 Yes, sir.

13 JUROR NO. 192: My older brother for domestic violence
14 a few years back.

15 THE COURT: All right. Your name is what? What's
16 your name?

17 JUROR NO. 192: Williams, Bobby Williams.

18 THE COURT: Bobby Williams. And your juror number is
19 what?

20 JUROR NO. 192: 192.

21 THE COURT: 192. Would that have any bearing upon
22 your decision in this case?

23 JUROR NO. 192: No, sir.

24 THE COURT: Okay. Thank you. Be seated.

25 Anyone else?

Jury qualification

1 (No response.)

2 THE COURT: All right. Any other questions requested
3 by the state?

4 MR. BULSA: No, Your Honor.

5 THE COURT: By the defendant?

6 MR. ROBINSON: None by the defense, Your Honor.

7 THE COURT: All right. We're going to select a jury.

8 And the way a jury is drawn in criminal court is that
9 all of your names are in the juror drum, and they're going
10 to be drawn by the clerk at random. All of your names are
11 typed on little slips of paper. She'll reach in and pull
12 one out.

13 As your name is called you're going to be asked to
14 come forward. If you'll just come and have a stance there
15 in front of the tables where the lawyers are seated, each
16 side has an opportunity to have you excused from serving in
17 the case and to have you seated for service in the case.

18 If either side asks that you be excused, just go back
19 and have a seat where you are now. If both agree to have
20 you seated for service in the case, then you'll be having a
21 seat in the jury box to my left and to your right.

22 So if you'll simply please come forward as your name
23 is called, you'll be instructed if you have been selected
24 for service in the case or you are to be excused from
25 service in the case.

Jury qualification

1 (Whereupon, a jury was impanelled.)

2 THE COURT: All right. Those jurors who have been
3 selected, I'm going to ask you to please go with the
4 bailiff to a jury room, and I'll bring you back in just a
5 few minutes.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Are there any matters that need to be
9 addressed regarding jury selection by the state?

10 MR. BULSA: No, Your Honor.

11 THE COURT: By the defendant?

12 MR. ROBINSON: No exceptions by the defense, Your
13 Honor.

14 (Whereupon, the remaining members of the jury venire
15 were excused.)

16 THE COURT: All right. I know we have some pretrial
17 motions. How long do y'all anticipate those to take?

18 MR. BULSA: The Jackson vs. Denno suppression hearings
19 is on the statements, will require testimony.

20 We have a video that is of an interview. The state is
21 not intending to put in the entire video. We just have a
22 small portion we will play.

23 I don't know if it would require Your Honor to watch
24 the entire thing or not. That's about almost two hours.

25 Yes, sir. The state only intends to put in a very

1 small portion, less than two minutes, less than five
2 minutes.

3 THE COURT: Well, what's, what's the defendant's
4 position on the -- is the tape something the defendant
5 wants me to watch in entirety?

6 MR. ROBINSON: Your Honor, I don't think the Court
7 needs to watch the entire thing. It's just a section that
8 we're speaking of as far as when he talks to him, as far as
9 whether it was voluntary. That's really what -- this is
10 only a snippet of that film, not the whole two hours.

11 THE COURT: All right. And that's how much, how long?

12 MR. BULSA: I think it's about two minutes, if that
13 long.

14 THE COURT: Okay.

15 MR. BULSA: Certainly less than five. But it would
16 require an officer to put up foundation for it.

17 THE COURT: All right.

18 MR. BULSA: He's not here. We were going to call him
19 if we got to that point.

20 THE COURT: Okay. Well, that's the voluntariness
21 hearing.

22 What else?

23 MR. ROBINSON: Your Honor, we have a motion to
24 sequester that we have. We would ask that the witnesses be
25 sequestered.

1 They have the four codefendants that are accessories
2 after the fact and so forth, before the fact on at least
3 one of them. They give conflicting testimony.

4 THE COURT: Well, are they in custody or not in
5 custody?

6 MR. ROBINSON: They're not in custody.

7 THE COURT: Okay. Have they given written statements
8 or not?

9 MR. ROBINSON: They have.

10 THE COURT: They have?

11 MR. ROBINSON: They have given written statements. I
12 know that they all have given written statements.

13 THE COURT: Well, do you want all the witnesses
14 sequestered?

15 MR. ROBINSON: Correct, yeah. That's correct.

16 THE COURT: Any objection?

17 MR. BULSA: No, sir. We just ask for reciprocity.

18 THE COURT: Oh, it will be.

19 All right. Now, I don't have all of the witnesses
20 here. I know that. So y'all will have to instruct those
21 witnesses that you intend to call that they are not to be
22 present in the courtroom until their testimony has been
23 concluded, and they are not to discuss their testimony or
24 the testimony of any other witness at any time during the
25 course of this trial.

1 MR. BULSA: We would of course like to have one
2 officer as the case officer. We had two primary that
3 worked it. I would like both of them if I could.

4 THE COURT: What's the defendant's position on the
5 case officers?

6 MR. ROBINSON: Your Honor, the case is all
7 circumstantial. It's not -- the officers, I think, I
8 think -- I don't have a problem with that, Your Honor, in
9 this case. And it would probably make things smoother as
10 well.

11 THE COURT: All right. So who do you want here?

12 MR. BULSA: Jason Bryant and David Taylor.

13 THE COURT: All right. Mr. Bryant and Mr. Taylor can
14 remain. All right.

15 MR. BULSA: And lastly Ms. Davis. She'll be one of
16 the first witnesses to testify. But she is a family member
17 representing her family. We would like her in the
18 courtroom as well.

19 THE COURT: Any objection to Ms. Davis remaining?

20 MR. ROBINSON: No objection.

21 THE COURT: All right. Ms. Davis will remain. All
22 other witnesses will be excluded until they testify.

23 MR. BULSA: Thank you, Your Honor.

24 THE COURT: All right. What other motions?

25 MR. ROBINSON: Your Honor, we have a motion in limine

1 that -- regarding we filed this with the Court.

2 Your Honor, the state is going to try to use the fact
3 that my client went to Florida with the main codefendant,
4 Mr. Salters, and the other folks in this case, as well as
5 the, as well as the, traveled to North Carolina where he
6 was working in North Carolina up in the Laurinburg area.

7 We believe that they are going to attempt to use that
8 information, in testimony regarding that information, to
9 show some sort of intent. We believe because of that,
10 which we believe would be very prejudicial to my client --
11 he was not, they were not -- there was no warrants before
12 they went to North Carolina or Florida. There was nothing
13 like that. They weren't being wanted or anything of that
14 nature.

15 So we think that the, that the, any sort of benefit
16 would be more than outweighed by any sort of prejudicial
17 value that would take place to offer that testimony. So we
18 would like that testimony about North Carolina and Florida
19 limited as far as testimony on their side.

20 THE COURT: Mr. Bulsa.

21 MR. BULSA: Your Honor, the state would argue that is
22 certainly amissible as flight evidence.

23 We believe the cases laid out will show that they were
24 leaving initially for Florida to avoid detection and
25 possibly to dispose of the murder weapon.

1 THE COURT: Well, have you got somebody that's going
2 to testify to that fact?

3 MR. BULSA: Yes, sir, I do. The codefendants will
4 testify about the fact that they were going to Florida.

5 THE COURT: Well, I mean the fact that they're going
6 to Florida to avoid being apprehended and-or to dispose of
7 evidence?

8 MR. BULSA: I don't know that they'll put it in those
9 terms.

10 There is a discussion of trying to get rid of the gun.
11 They brought the guns back. So they didn't, they didn't do
12 it as they were leaving. But there was discussion of
13 getting rid of them in route or on the way back.

14 The testimony was going to show that they went to
15 Florida to meet with one of Mr. Salters' family members to
16 basically hide out down there.

17 THE COURT: Well, now, is that your take on it or is
18 that what the witness will testify to?

19 MR. BULSA: That's my take. I don't know what --

20 THE COURT: Well, what I'm saying is the fact that
21 somebody leaves the jurisdiction without knowing that
22 someone is attempting to arrest them or locate them is not
23 necessarily evidence of flight. It depends on the
24 circumstances.

25 But what I'm saying is if you have a witness such as a

1 codefendant who is going to testify we went to Florida so
2 nobody could catch us and we tried to find a place we could
3 hang out until it all blew over, that's a different
4 situation. But if the codefendant is just going to say,
5 well, we just decided to go to Florida, that's not evidence
6 of flight. That's just evidence of intent to go to
7 Florida.

8 MR. BULSA: They went to Florida to get out of town,
9 is the way it's going to come out.

10 THE COURT: Okay. Well, I tell you what let's do.

11 What we'll need to do is before any evidence is
12 admitted regarding the defendant leaving the jurisdiction
13 to go to North Carolina or to Florida, we'll have to
14 address that outside the jury's presence. And I'll
15 determine based upon the context of the case whether that's
16 admissible evidence or the probative value outweighs any
17 unfair prejudice.

18 MR. ROBINSON: The next motion, Your Honor, is
19 regarding the .380 bullets that were taken that were in the
20 possession of my client in North Carolina.

21 There's been no showing by anyone that there's a link
22 between these particular bullets that belonged to any sort
23 of weapon or any sort of murder weapon or anything of that
24 basis in this case.

25 And to put that evidence in, to put in these .380

1 bullets that they're talking about, would be highly
2 prejudicial to my client in this case.

3 THE COURT: Well, when? When were they recovered?

4 MR. BULSA: About three months after the incident. He
5 was arrested in North Carolina, and in his pocket he had
6 four .380 bullets. The victim was killed with a .380
7 automatic weapon.

8 THE COURT: And are these bullets connected with that
9 weapon?

10 MR. BULSA: Could have been. We feel that's a fact
11 the jury should be able to consider.

12 The head stamps on at least three of the four bullets
13 I believe were similar in nature to the head stamp on the
14 rounds found at the scene.

15 THE COURT: Well, is the weapon believed to have been
16 used in the commission of this crime in the custody of the
17 state?

18 MR. BULSA: Yes, sir.

19 THE COURT: All right. And have those -- has that
20 weapon and those bullets been sent to a forensic laboratory
21 for ballistics testing?

22 MR. BULSA: Yes, sir.

23 THE COURT: And what was the result of the testing?

24 MR. BULSA: They can't tell anything with the rounds
25 because they weren't fired. These are actual bullets

1 recovered on the defendant.

2 They compared them trying to determine if they had
3 been in that gun. Those were inconclusive.

4 THE COURT: Well, they can fire the weapon.

5 MR. BULSA: Yes, sir. The defendant Lynch had four
6 rounds in his pocket when he was arrested.

7 THE COURT: Right.

8 MR. BULSA: Four fired rounds.

9 THE COURT: Well, what about the -- what about
10 Mr. Evans? Was there any bullet recovered from Mr. Evans?

11 MR. BULSA: Yes, sir.

12 THE COURT: All right. And was there any ballistic
13 testing done on that bullet in relationship to the, to the
14 weapon in the possession of the state?

15 MR. BULSA: Yes, sir.

16 THE COURT: What was the result of that?

17 MR. BULSA: It is the murder weapon.

18 THE COURT: Okay. Now, now that we have a bullet that
19 we know was fired from a particular gun, we have some
20 additional bullets that the state contends perhaps were
21 bullets in the possession of this defendant that were used
22 in connection with that same weapon.

23 So what I'm asking you is did, did SLED or somebody
24 compare the two to determine if they were the same type of
25 ammunition.

1 MR. BULSA: They're the same caliber. They can be.

2 THE COURT: You can go to K-Mart and Wal-Mart.

3 MR. BULSA: Yes, sir. They cannot be definitive that
4 this was the same.

5 THE COURT: And there's no dispute this was three
6 months --

7 MR. BULSA: No dispute.

8 THE COURT: -- after the incident is alleged to have
9 occurred?

10 MR. BULSA: We just got information that he was living
11 in North Carolina and got warrants. He was arrested based
12 on those warrants.

13 THE COURT: All right. I'll, I'll reflect on that
14 during lunch. I will let y'all know after lunch.

15 MR. ROBINSON: Thank you, Your Honor.

16 MR. BULSA: Thank you.

17 THE COURT: Is that it?

18 MR. ROBINSON: Your Honor, other than the Jackson vs.
19 Denno, I think that the Court has covered the motions, the
20 pretrial motions that we have.

21 THE COURT: Okay. And so now y'all think the Denno
22 hearing is going to take about how long?

23 MR. BULSA: Half an hour to an hour. We've got, we do
24 have the written statement that I believe he's also
25 challenging --

1 MR. ROBINSON: Yes. That's true.

2 MR. BULSA: -- which will require potentially two
3 officers for that case and then another additional officer
4 for the oral interview.

5 THE COURT: Well, do you think an hour is a fair
6 assessment?

7 MR. BULSA: I don't know how intensive the
8 cross-examination would be. Mine won't be that long.

9 MR. ROBINSON: I'll make sure I go pretty fast, Your
10 Honor. I'm not going to try to take a lot of time.

11 THE COURT: Do you believe you'll be calling any
12 witnesses during your opportunity?

13 MR. ROBINSON: I would probably call Mr. McDowell,
14 Your Honor.

15 THE COURT: Okay. All right. Well, I'm going to have
16 the jury come back at 3:30, and then we will handle the
17 voluntariness hearing after lunch.

18 All right. Bring the jury back in, please.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. Ladies and gentlemen, I've got
22 some matters that I'm going to -- I've had scheduled to
23 hear this afternoon for about an hour.

24 So what we're going to do is we're going to excuse you
25 for lunch. I'm going to address those other matters after

1 lunch. And then we'll begin with the trial of this case,
2 I'm hoping, at 3:30, at 3:30 this afternoon.

3 So you are going to be excused now for lunch. I'm
4 going to ask that you please report back to that jury room
5 that you've just been shown to. Please be there not later
6 than 3:30 this afternoon.

7 Keep in mind during the course of this trial you're
8 not permitted to talk about this case in any fashion with
9 any person whatsoever. That includes your fellow jurors,
10 includes any family members, includes anybody.

11 You can't talk about the case until you're actually
12 involved in jury deliberations, and that of course won't be
13 until after the case has been presented, I've instructed
14 you on the law and I've asked you to begin deliberating.

15 So do not discuss the case in any fashion whatsoever
16 during the lunch recess or at any other time until you've
17 been asked to begin jury deliberations.

18 Also, any verdict that a jury renders has to be based
19 upon testimony and evidence actually received during the
20 trial of the case. So during the trial of this case you
21 can't supplement the evidence by conducting your own
22 research or doing your own investigation into any issue
23 that might arise during the course of the trial.

24 So keep in mind you cannot conduct any research, you
25 cannot do any investigation of any type and you are not

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

1 permitted to discuss the case with any person in any
2 fashion whatsoever.

3 With that, you are excused for lunch. Please report
4 back to your jury room this afternoon at 3:30, at 3:30 this
5 afternoon. Have a good lunch.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Court is in recess until 2:30,
9 until 2:30 this afternoon.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Are y'all ready?

12 MR. BULSA: Your Honor, we can begin with the first
13 statement. I was fixing the video for a second. The state
14 calls Jason Bryant.

15 (Preinterrogation waiver form marked State's
16 Suppression Exhibit No. 1 for Identification; statement
17 dated November 7, 2005, marked State's Suppression Exhibit
18 No. 2 for Identification.)

19 JASON BRYANT, having been
20 first duly sworn, testified as follows:

21 MR. BULSA: May it please the Court.

22 DIRECT EXAMINATION BY MR. BULSA

23 Q Detective Bryant, you're employed with the Spartanburg
24 County Sheriff's Office?

25 A Yes, sir, I am.

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

1 Q And did you participate in the interview of David
2 Lynch, a/k/a Roy McDowell?

3 A Yes, sir, I did.

4 Q And how did you first come into contact with him on
5 the date that you interviewed him?

6 A On the very first day that he was interviewed?

7 Q And the actual written statement that he gave, that
8 date.

9 A Okay, sir. That morning at around 9:00, at 9:00 a.m.,
10 he had approached me in the magistrate courtroom where
11 preliminary hearings were taking place. And he advised me
12 that he needed to talk to me.

13 Q And was that in an actual courtroom?

14 A Yes, sir.

15 Q And where was he seated when he approached you?

16 A He was sitting in the benched areas to the left in
17 magistrates court.

18 Q Was he able to get up and come to you?

19 A He flagged me down for me to approach him.

20 Q Okay. And what did you do when he did that?

21 A I went and seen what he wanted. And he advised me
22 that he wanted to talk to me.

23 Q Okay. Had you tried to talk with him before?

24 A I had.

25 Q And when was that approximately?

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

- 1 A That was around the fourth month of 2005.
- 2 Q Sometime in April of 2005 you had approached him. Had
- 3 he given you a statement then?
- 4 A No, sir. He did not.
- 5 Q Why not?
- 6 A He didn't wish to speak.
- 7 Q Did he invoke one of his rights?
- 8 A Yes, sir, he did.
- 9 Q And did you cease questioning him at that time?
- 10 A Yes, sir, I did.
- 11 Q Did you have any other contact with him until this
- 12 date in July?
- 13 A Well, in North Carolina while he was speaking he had
- 14 invoked and then began to ask me questions about the case.
- 15 And I advised him again that if he wanted to speak with me
- 16 I would readvise him of his rights, which he did sign a
- 17 waiver at that time. And then he invoked again.
- 18 Q Okay. So in April he's invoked his rights. You
- 19 stopped questioning him. Do you ever approach him before
- 20 this incident in July?
- 21 A No, sir.
- 22 Q Okay. So you ceased all contact with him.
- 23 A Yes, sir.
- 24 Q Was he represented at the preliminary hearing?
- 25 A I'm not sure, sir.

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

1 Q What exactly did he say when he called you over?

2 A He stated that he'd like to talk to me in regards to
3 the case.

4 Q How did you answer him?

5 A I advised him that I was tied up in regards to some
6 cases and matters that I had. And myself and Investigator
7 Taylor had picked him up at about 1:30 or 1:45 from the
8 jail.

9 Q Did you tell him you were going to have him brought
10 over to the sheriff's office?

11 A Yes, sir.

12 Q Did he seem agreeable with that?

13 A Yes, sir.

14 Q What took place when you got him to the sheriff's
15 office?

16 A When we arrived at this sheriff's office we went into
17 the interview room and he was then again advised of his
18 rights, a preinterrogation waiver form.

19 Investigator Taylor had filled out the top part of the
20 form. I had advised him of his rights in which it stated
21 agreed to talk to myself and Investigator Taylor.

22 And then at the bottom after he had signed, it at the
23 bottom of the preinterrogation waiver form, I got him to
24 also sign that he had reinitiated contact with me on that
25 date at about 9:15 a.m., I believe, Judge. And he signed

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

- 1 it, and then Investigator Taylor signed it, and then I
2 signed it.
- 3 Q Let me show you State's Exhibit No. 1. Is that the
4 document you're referring to?
- 5 A Yes, sir.
- 6 Q And that, in fact, has his rights.
- 7 A Yes, sir.
- 8 Q And you read them as they're listed on that sheet.
- 9 A Yes, sir.
- 10 Q And did he understand those rights?
- 11 A Yes, sir.
- 12 Q I believe at the bottom of the form is what you're
13 talking about where he --
- 14 A Yes, sir. That's correct.
- 15 Q He acknowledged that he had reinitiated contact.
- 16 A Exactly.
- 17 Q Who was present during the interview?
- 18 A Myself and Investigator Taylor.
- 19 Q Did you make him any promises during that interview?
- 20 A No, sir.
- 21 Q Did you threaten him or coerce him in any way?
- 22 A No, sir, not at all.
- 23 Q Did he appear to understand what was taking place?
- 24 A Yes, sir.
- 25 Q Did he ever indicate he did not wish to speak to you?

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

- 1 A No, sir.
- 2 Q Was there any discussion at all about his attorney?
- 3 A No, sir.
- 4 Q Did he, in fact, then give you a statement?
- 5 A Yes, sir.
- 6 Q And how was that statement taken?
- 7 A It was taken written on a voluntary statement form.
- 8 Q I show you State's Exhibit No. 2, a series of pages.
- 9 How many pages is there?
- 10 A Eleven pages, sir.
- 11 Q In whose hand is that written?
- 12 A That's written in David Lynch's hand.
- 13 Q So explain to the Court how that process took place.
- 14 A What had happened was he had came to the sheriff's
- 15 office, was advised of his rights, signed the
- 16 preinterrogation waiver form. And then he had handwritten
- 17 his own statement while me and Investigator Taylor was
- 18 outside. He had written it himself.
- 19 Q Did you then meet with him after he wrote that
- 20 statement?
- 21 A We did.
- 22 Q Did you have him reread it?
- 23 A Yes, sir. We went through it, and I had witnessed the
- 24 statement, and Investigator Taylor had notarized the
- 25 statement.

Jason Bryant (In-camera)
Cross-examination by Mr. Robinson

1 Q He acknowledged that as his statement?

2 A Yes, sir. Also the copies of the statement were given
3 to him.

4 Q Okay.

5 A Along with the preinterrogation waiver form.

6 Q And the documents we have here, these are the original
7 pages, the top sheet?

8 A Yes, sir, that's correct.

9 Q Did he at any time indicate he wished to stop talking
10 to you or stop the statement?

11 A No, sir, not at all.

12 Q Okay. Thank you. Answer any questions Mr. Robinson
13 has.

14 MR. ROBINSON: May it please the Court.

15 THE COURT: Mr. Robinson.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON

18 Q Officer, you would agree that he was very cooperative,
19 wouldn't you?

20 A I'm sorry, sir?

21 Q He was very cooperative with you, wasn't he?

22 A Yes, sir.

23 Q When you had him or when he wrote this statement, he
24 was cooperative, right?

25 A Yes, sir.

Jason Bryant (In-camera)
Cross-examination by Mr. Robinson

1 Q Okay. And he took his time and wrote this statement,
2 is that right?

3 A Yes, sir.

4 Q Okay. He didn't give you any problems or any hassle
5 about this.

6 A Not a bit.

7 Q To your knowledge was he under the influence of any
8 drugs or alcohol?

9 A No, sir. Not at all.

10 Q How would you tell that?

11 A I've seen many people under the influence of drugs and
12 alcohol.

13 Q Okay. But originally he came to you first and asked
14 you if he could tell you about what happened, is that
15 right?

16 A Correct.

17 Q Because he wanted to explain to you the events that
18 occurred, correct?

19 A Correct.

20 Q This -- as far as this 11-page statement goes, how
21 long did it take him to write this 11-page statement?

22 A Several hours.

23 Q Several hours. And was this done at the police
24 station?

25 A Yes, sir.

Jason Bryant (In-camera)
Cross-examination by Mr. Robinson

1 Q It was. Okay. And how large of a room are we talking
2 about this statement is given?

3 A The room we were in was in the old conference room at
4 the old sheriff's office. It's approximately about 12 foot
5 by 20 foot or better.

6 Q Okay. Did he have anyone in the room with him?

7 A No, sir.

8 Q Okay. So he was there by himself writing this
9 statement.

10 A Correct.

11 Q Is that correct? And you weren't anywhere near him at
12 that time?

13 A We were outside the door area.

14 Q Outside the door. Okay.

15 A Because he wanted -- he was, wanted to handwrite his
16 own statement.

17 Q Okay. So he was in custody at that time, is that
18 right?

19 A Sure.

20 Q All right. And this lasted for how many hours?

21 A If I could see the bottom time on the statement.

22 MR. ROBINSON: May I approach, Your Honor?

23 THE COURT: Yes.

24 A Thank you.

25 He was advised of his rights at 1:32 p.m., and the

David Taylor (In-camera)
Direct examination by Mr. Bulsa

1 statement ended at 8:05 p.m. that evening.

2 Q So how long would that be?

3 A Approximately six and a half hours.

4 Q And did he have any chance for a break or anything
5 like a Coke --

6 A Sure.

7 Q -- or to get something to drink or the bathroom?

8 A Yes, sir.

9 Q He did have that.

10 A Yes, sir.

11 Q Okay.

12 MR. ROBINSON: That's all I have for this witness,
13 Your Honor.

14 MR. BULSA: Your Honor, nothing further on this issue
15 regarding the voluntariness of the written statement.

16 THE COURT: All right. You may step down.

17 MR. BULSA: The state calls David Taylor.

18 DAVID TAYLOR, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q Detective Taylor, were you actually the lead
22 investigator on this case?

23 A Yes, sir. I had taken it over when Sergeant Wood made
24 sergeant.

25 Q And were you present at the preliminary hearing?

David Taylor (In-camera)
Direct examination by Mr. Bulsa

- 1 A No, sir, I was not.
- 2 Q So you did not see the reinitiation of contact?
- 3 A No. I did not.
- 4 Q When did you become involved in this interview?
- 5 A Investigator Bryant had advised me that Mr. Roy David
6 McDowell, Jr., a/k/a Roy Lynch, had reinitiated contact
7 with him at a preliminary hearing. And he had -- we had
8 set it up to go pick him up after lunch that, that
9 afternoon.
- 10 Q Were you present in the interview?
- 11 A Yes, I was.
- 12 Q And did you witness the acknowledgement by the
13 defendant that he was the one that reinitiated the contact?
- 14 A Yes, I did.
- 15 Q Did he appear willing to speak to you and Detective
16 Bryant?
- 17 A Yes, sir.
- 18 Q So he wasn't -- he was fully aware of what was going
19 on.
- 20 A Yes, sir.
- 21 Q Were there any promises made to him?
- 22 A No, sir.
- 23 Q How did it come out that he wrote that in his own
24 hand?
- 25 A He wanted to write it in his own writing. I had

David Taylor (In-camera)
Cross-examination by Mr. Robinson

1 exited the room, and shortly thereafter Investigator Bryant
2 walked out with me. We stood outside the door. There's a
3 window. You could see him. He was steadily writing.

4 Q Were you present when Detective Bryant went back over
5 it with him?

6 A Yes, sir, I was.

7 Q Did you witness his statement?

8 A I did.

9 Q And he had been in custody for a matter of months at
10 this point, is that correct?

11 A Yes, sir. I believe it was three, three months,
12 something like that.

13 Q Answer any questions Mr. Robinson has.

14 MR. ROBINSON: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON

17 Q Officer Taylor, you had an opportunity to listen to
18 Officer Bryant. You were in the courtroom, correct?

19 A Yes, sir.

20 Q You were sitting over here.

21 A Yes, sir.

22 Q Now, you would agree that this was over a 6-hour
23 period of time, is that right?

24 A Yes, sir.

25 Q Six hours or so. Is it your testimony under oath that

David Taylor (In-camera)
Cross-examination by Mr. Robinson

1 you and Officer Bryant didn't go into the room at any time
2 in that six hours?

3 A No, no, no. He could have asked for a Coke, something
4 to eat. We would have been in and out. But contact with
5 him, I didn't have any, no, sir.

6 Q Okay. So it's your testimony then that you didn't
7 have any conversation with him to help him with this
8 statement, is that correct?

9 A No, sir. He did it. He wanted to write this on his
10 own. That's, that's every bit of his words.

11 Q Did he write everything all at once or did he write it
12 in pieces? Do you know?

13 A I don't. I can't answer that. I don't know. I just
14 know he was writing. When we would look in, he'd be
15 writing, maybe getting his thoughts together or something
16 like that.

17 Q And you and Officer Bryant were outside while he was
18 doing the statement, is that right?

19 A Yes, sir. That's a little sitting area where the
20 secretary usually sits.

21 Q How many breaks do you think he got during the period
22 of time?

23 A Sir, I, I don't know. I really don't.

24 Q And it's your testimony -- let me make sure I'm clear
25 on this. You're stating under oath that you did not assist

David Taylor (In-camera)
Redirect examination by Mr. Bulsa

1 him in making any statements in this.

2 A No, sir; no, sir. I wouldn't.

3 Q Okay. Thank you.

4 (Map marked State's Suppression Exhibit No. 3 for
5 Identification.)

6 REDIRECT EXAMINATION

7 BY MR. BULSA

8 Q Detective, let me show you State's Exhibit No. 3.

9 It's a diagram of what?

10 A This is a diagram of the incident location over on
11 Sunnyglen in the Greer community that Mr. Roy D. McDowell,
12 Jr. drew approximately at 2:15 p.m. on the 11th day of July
13 of '05. And it was witnessed. It was signed by him, of
14 course, and witnessed by Mr. Jason Bryant, Investigator
15 Bryant, and myself.

16 Q So he not only wrote a statement. He actually drew a
17 diagram of the incident.

18 A That's right, that's correct.

19 Q And this was at 2:15.

20 A Uh-huh, shortly after we, we got into the room.

21 Q Okay. So was there some discussion with him before he
22 actually -- before y'all left him to write it out?

23 A Yes, sir.

24 Q And during that discussion he drew this diagram.

25 A Right. He was telling us about what happened.

David Taylor (In-camera)
Redirect examination by Mr. Bulsa

1 Q There was an interview arranged for the next day. Who
2 set that up?

3 A I don't recall who set that one up, if he -- he
4 initiated it with us, wanted to take us and show us some,
5 some things.

6 Q Talking about the interview with Mr. Woodcock.

7 A Oh, I'm sorry, I'm sorry. Mr. Woodcock lined up
8 through Jason Bryant and myself.

9 Q That was to take place the day after this statement.

10 A Yes, sir, because he had been with us for so long that
11 day.

12 Q Detective Woodcock was no longer working.

13 A He had left. I think he sat it up for that.

14 Q You mentioned taking Mr. Lynch somewhere. What is
15 that?

16 A He had indicated to us he wanted to show us where some
17 items were dumped, and we went and located some items or
18 had already located those items.

19 Q Express that a little further if you would.

20 A He had talked about some clothing that was used like
21 a, specifically a, green jacket, some shoes. And there's
22 another item. I can't recall right now.

23 Q And he actually willingly went with you and Detective
24 Bryant?

25 A And pointed it out, yes, sir..

David Taylor (In-camera)
Recross-examination by Mr. Robinson

1 Q Pointed out the location where these items were
2 dumped.

3 A Yes, sir.

4 Q What day was that?

5 A The very next day, the 12th.

6 Q All right. Thank you.

7 RECROSS-EXAMINATION

8 BY MR. ROBINSON

9 Q Officer Taylor, on this -- I'm going to go from the
10 voluntary statement to what you just spoke to Mr. Bulsa
11 about.

12 A Yes, sir.

13 Q This conversation you may have had with him regarding
14 any sort of items or something on the side of the road or
15 that were some place. Is that right?

16 A Yes, sir.

17 Q Do you have the -- did you present to the Court any,
18 any information regarding like a waiver, like a written
19 waiver, or anything like that?

20 A No, sir.

21 Q Did you provide that to the court today?

22 A No, sir. I don't believe so.

23 Q Okay. So you would agree that he was under arrest at
24 the time. He was actually incarcerated, is that correct?

25 A Yes, sir. He was in jail.

David Taylor (In-camera)
Recross-examination by Mr. Robinson

1 Q He was in custody, is that right?

2 A Yes, sir.

3 Q So no, no, no written waiver was done at that time,
4 correct?

5 A I don't recall on that day, no, sir.

6 Q In fact, no, no verbal waiver was also done as well,
7 was it?

8 A I don't recall that, no, sir.

9 Q And that would be regarding Mr. Bulsa's, Mr.
10 Bulsa's -- the testimony you just gave to him regarding
11 going out to a scene or talking about any clothes or items.
12 That would be regarding that, right?

13 A That is correct.

14 MR. ROBINSON: That's all I have of this witness, Your
15 Honor.

16 MR. BULSA: Nothing further on this issue, Your Honor.

17 THE WITNESS: Step down, Your Honor?

18 MR. BULSA: Your Honor, that's the state's showing
19 regarding the voluntariness of the first written statement.

20 THE COURT: All right. Mr. Robinson, does the
21 defendant wish to present any testimony or other evidence
22 regarding the voluntariness of the written statement as is
23 reflected in State's Exhibit No. 2 for the purposes of this
24 hearing?

25 MR. ROBINSON: Your Honor, we have decided that he

1 would not testify. And I would make my motion when the
2 Court sees fit.

3 THE COURT: All right. Mr. Lynch, do you understand
4 you've got a right to testify during the hearing of this
5 particular issue?

6 What the Court is being asked to decide right now is
7 whether or not the statement that the state contends you
8 made back on July the 11th of 2005 was freely and
9 voluntarily made. So I'm going to consider any evidence
10 presented at this hearing in making that determination.

11 Now, the state has made their presentation. You have
12 the same opportunity to make a presentation or to testify
13 or present other evidence if you wish to that relates to
14 the issue of the voluntariness of this written statement.

15 Mr. Robinson has indicated that you do not wish to
16 testify and provide the Court with any additional evidence
17 on that issue. Is that true?

18 THE DEFENDANT: That would be correct, Your Honor.

19 THE COURT: Do you understand you have a right to
20 testify at this hearing and the scope of that testimony
21 would be limited to the voluntariness of any written
22 statement the state claims you made?

23 THE DEFENDANT: I fully understand that, Your Honor.

24 THE COURT: But you do not wish to testify?

25 THE DEFENDANT: That would be correct, Your Honor.

1 THE COURT: Do you have any other witnesses you want
2 Mr. Robinson to call on that point?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: Okay. Thank you. Be seated.

5 THE DEFENDANT: Thank you.

6 THE COURT: All right. I'll be glad to hear any
7 argument you would like to make.

8 MR. ROBINSON: May it please the Court, Your Honor.

9 AS to the -- I want to kind of go backwards in this a
10 little bit.

11 Officer Taylor -- the last piece of testimony he
12 talked about was regarding some statements that were given
13 to him or elicited from Mr. Lynch regarding some articles
14 of clothing or any sort of items that he saw in the woods
15 or took him out some place or something like that. And
16 then I think the Court heard him say that he was in custody
17 and that he did not get a written or an oral or verbal
18 waiver of rights done.

19 So we think as a matter of law that anything regarding
20 that, anything regarding his verbal conversation with
21 Mr. Lynch at that time, would be inadmissible in this case
22 because it was -- the proper procedures were not followed
23 for those statements.

24 THE COURT: Your position is that every time that a
25 law enforcement officer interrogates or wishes to interview

1 the defendant with respect to the same offense, every time
2 if there's any break between the interviews, that they have
3 to readvise him of his Miranda warnings?

4 MR. ROBINSON: I think, I think it's going to be --
5 it's our position, my position, Your Honor, that there was
6 a lapse of time between when this statement was given and
7 when he actually was talking about going out some place and
8 looking at, looking at some items or something of that
9 nature.

10 So I think it's a little bit of a change in what he
11 was talking about at that point. That's my position.

12 THE COURT: Well, what was the change? They were
13 still talking about the same criminal offenses, weren't
14 they?

15 MR. ROBINSON: It's the same criminal case, correct,
16 Your Honor.

17 THE COURT: All right. Well, do you have any, any law
18 to support that position?

19 MR. ROBINSON: I do not. That's -- the argument I'm
20 making, Your Honor, is based on just that there was no
21 written or verbal statement, verbal waiver given at that
22 time point. But that's our position. I have no law to
23 support that.

24 THE COURT: So the position is that every time there's
25 a break in an interview the defendant has to be readvised?

1 MR. ROBINSON: I don't think there's any law to
2 support that, Your Honor.

3 THE COURT: Well, I mean, is that what your position
4 is?

5 MR. ROBINSON: I think if you, if you, if you take my
6 position, that is what my position is.

7 THE COURT: All right. Anything else?

8 MR. ROBINSON: No, sir.

9 THE COURT: All right. Mr. Bulsa, do you want to be
10 heard?

11 MR. BULSA: Your Honor I believe knows the law as well
12 as anyone in the courtroom that police do not have to
13 re-Mirandize every time they meet with an individual,
14 especially in this case, Your Honor.

15 The arguments were made during the interview on the
16 11th to go on a ride to show the locations. In fact, in
17 the last portion of his statement, written statement, he
18 discusses or writes in his own hand a comment about the
19 clothing being deposited in the woods. And that is what
20 they made arrangements to do, was for him to go show them
21 the location.

22 I think the law is clear that the Miranda for the
23 statement clearly covers any subsequent interview.

24 THE COURT: All right. Any reply, Mr. Robinson?

25 MR. ROBINSON: No reply, Your Honor.

1 THE COURT: All right. Well, based upon the testimony
2 presented, I do find the defendant was in custody. Miranda
3 warnings were required to be provided.

4 It does appear that prior to the statement being made
5 by the defendant on July the 11th of 2005 he had been
6 advised of his Miranda rights on three separate occasions.

7 The first two occasions he apparently understood those
8 rights because he invoked his right to have counsel present
9 to assist him before any interrogation took place if he
10 wished to have that interrogation take place.

11 Based upon his request for counsel, law enforcement
12 immediately stopped the interview process and did not
13 reinitiate the process until Mr. Lynch initiated contact
14 with law enforcement first.

15 The second occasion, while he did reinitiate the
16 contact, he again invoked the right to counsel. And at
17 that time, as I understand the testimony, the law
18 enforcement officers again stopped the interrogation and
19 stopped the interview.

20 It was only after Mr. Lynch reinitiated contact with
21 Detective Bryant at a preliminary hearing on July the
22 11th of 2005 that an actual statement given by the
23 defendant resulted.

24 Based upon the testimony, it appears that Mr. Lynch
25 was again advised of his rights on July the 11th. He was

1 not coerced; he was not promised anything; he was not
2 threatened in any fashion. There was no necessity that was
3 deprived him, and any reasonable request was granted. I
4 don't believe there were any requests by the defendant.
5 But according to the officers, had there been any, they
6 would have been complied with so far as food or drink and
7 that sort of thing, or rest for that matter, is concerned.

8 It's also apparent that the defendant in initiating
9 the contact also generated the written statement on his own
10 without any participation or even questioning or interviews
11 being conducted by the officers.

12 The defendant was placed in a room. He was allowed to
13 be alone. He was provided paper and a pen and apparently
14 wrote out a written statement. And I'm not sure exactly
15 how many pages it is, but there are several, more than ten
16 it appears. And it does not appear based upon the
17 testimony that at the time that written statement was
18 provided that the defendant was being coerced, pressured,
19 threatened or promised anything.

20 He was not under the influence of any substance which
21 might prevent him from fully understanding what he was
22 doing. And it does appear that he had sufficient education
23 and intelligence to understand completely his Miranda
24 warnings and understand the consequences of his decision to
25 provide law enforcement officers with a statement.

1 So I do find the defendant was in custody. I do find
2 that he was properly advised of his Miranda warnings. I
3 further find that he understood those warnings and freely,
4 knowingly, intelligently and voluntarily waived those
5 rights and provided a statement in a written fashion to law
6 enforcement.

7 I further find that the subsequent interview with
8 Detective Taylor regarding the location of certain
9 evidentiary items, while that was not preceded by an
10 additional Miranda warning, the defendant had previously
11 been provided Miranda warnings on three separate occasions.
12 He apparently understood those rights. And he continued to
13 cooperate and to provide law enforcement with information.

14 Every time an interview is interrupted it is not
15 necessary that additional Miranda warnings be given. It's
16 only necessary that the state establish by a preponderance
17 of the evidence that the defendant did understand his
18 Miranda rights. And there's nothing in this record by way
19 of evidence to indicate that at the time Mr. Lynch
20 continued to talk with Detective Taylor regarding those
21 evidentiary items that he did not still have an
22 appreciation and an understanding for his Miranda rights.

23 And therefore I do find that he continued to waive
24 those rights, and any statements made to either and both of
25 the detectives regarding this case were freely and

1 voluntarily made. And therefore the statements will be
2 allowed to be introduced in the presence of the jury.

3 All right. What else?

4 MR. BULSA: Your Honor, this is in conjunction with
5 the written statement.

6 Also, we had some discussion before the lunch about
7 the defendant being arrested with some bullets. I had a
8 voice mail from one of the officers whose father had a
9 heart attack. The officer is unavailable to come to court.
10 So we will not be introducing the bullets that were taken
11 from the defendant at his arrest however --

12 THE COURT: The officer that took the bullets in his
13 possession is not available?

14 MR. BULSA: Not available, yes, sir.

15 Now, but Mr. Lynch in his own hand commented about
16 having those bullets on his person in his statement. It's
17 on the last page of that statement, Your Honor.

18 THE COURT: And?

19 MR. BULSA: And so we want to introduce the statement
20 in its whole.

21 THE COURT: You're just talking about in reference to
22 the statement?

23 MR. BULSA: Yes, sir, the written statement. While I
24 understand I can't introduce them, I don't have all of the
25 necessary parties to introduce the actual bullets, the

1 defendant commented on those in his statement that he gave
2 to the police at his own initiation.

3 MR. ROBINSON: Your Honor, we would obviously object
4 to that as far as we would ask that that be redacted in
5 terms of the statement. And also too regarding any sort
6 of -- there are some items in here that -- regarding North
7 Carolina and some other items that the Court has not yet
8 ruled on if the Court wanted us to bring up as far as the
9 objection when they try to bring it in at some time in the
10 trial.

11 THE COURT: Well, I'm going to address the motion at
12 the time that it's sought to be introduced, but I'm going
13 to require that the jury be excused before the state
14 attempts to introduce that evidence. They understand that.

15 So it's not going to require an additional objection.
16 The state will have to notify the Court that that's the
17 evidence you intend to offer. And I'll address it outside
18 the presence of the jury.

19 Tell me about this reference, this gun, this .380
20 pistol, that's referenced on the last page of the
21 statement.

22 Was there any corroboration or support for that
23 position? Did the state make any determination that that
24 was valid information or invalid information?

25 MR. BULSA: Your Honor, as we said earlier, he was

1 caught with .380 caliber bullets.

2 The state's position is that that's his explanation of
3 why he had the .380 bullets on his person. He was claiming
4 they went with the gun he received in North Carolina.

5 THE COURT: I know. What I'm asking is did the state
6 make any attempt to determine whether or not -- by asking
7 the defendant or anything else -- did he, in fact, have
8 another, have a .380 pistol.

9 MR. BULSA: Yes, sir. There was an individual in
10 North Carolina that gave a statement claiming they saw a
11 weapon on his person in North Carolina.

12 THE COURT: Someone said they saw a weapon.

13 MR. BULSA: Yes, sir. They saw a weapon in his
14 possession in North Carolina.

15 THE COURT: But the state has never been provided with
16 the weapon or --

17 MR. BULSA: Not the weapon from North Carolina, no,
18 sir.

19 THE COURT: That's what I'm talking about.

20 Now, do I understand correctly that the weapon that
21 was used in the death of Mr. Evans is in the custody of the
22 state and that someone from the state law enforcement
23 division, Mr. Defreeze or somebody else, is going to
24 testify that the bullets in the possession of the defendant
25 were similar to those that could be fired from the weapon

1 that was used in killing Mr. Evans?

2 MR. BULSA: I had a discussion with -- it's Ken
3 Whitler actually who says they're the same caliber and the
4 strike mark on the ones that were recovered, he believes
5 were R. P.

6 Three of the four bullets that were taken off the
7 defendant had the mark on the casing R. P. He doesn't want
8 to go out -- he can't say definitively that they're the
9 same, they're of the same stock or whatever.

10 THE COURT: Well, I know that. No. I'm saying but
11 can he testify that those bullets found in the possession
12 of the defendant are the type similar to those, similar to
13 that which was used that resulted in Mr. Evans' death and
14 further that those bullets found in the possession of the
15 defendant could be fired from the weapon that the state has
16 in its custody that was used in killing Mr. Evans.

17 MR. BULSA: Yes, sir. He could testify to that.

18 THE COURT: Okay.

19 MR. ROBINSON: Your Honor, may it please the Court.

20 I would like the Court to look at the -- the SLED
21 reports do not support that as far as what he's, what Mr.
22 Bulsa is --

23 THE COURT: Well, of course, as you know, the SLED
24 report is not going to be used to prove any issue in this
25 case. Somebody is going to have to testify.

1 MR. ROBINSON: Your Honor, the three bullets from
2 North Carolina cannot be linked to the, to the gun that was
3 fired at Mr. Evans. Those cannot be linked to that gun.

4 Also, Your Honor, in terms of the -- this gun today
5 that they found is a miracle, pretty much, in terms of it
6 was sold at a sheriff's auction, and then it was found at a
7 pawn shop down in Columbia.

8 As far as that gun having any connection with this
9 case, that's still up in the air that any bullets were
10 fired from that gun that would match the ones that were
11 fired on Mr. Evans in this case.

12 THE COURT: Say that again.

13 I understood earlier that the weapon the state has has
14 been tested and compared with the bullet recovered from
15 Mr. Evans after the autopsy and that the ballistics expert
16 could testify that bullet was fired from that weapon. Did
17 I misunderstand?

18 MR. ROBINSON: One second, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. ROBINSON: I guess I'm not reading this report,
22 although I should, Your Honor.

23 THE COURT: Well, have you talked to -- who is the
24 ballistics expert?

25 MR. BULSA: Ken Whitler.

1 THE COURT: Have you talked to Agent Whitler?

2 MR. ROBINSON: I have not talked to him, Your Honor.

3 (Pause.)

4 MR. ROBINSON: Your Honor, the -- what Mr. -- if I'm
5 reading this correctly, what he says in his report here
6 regarding the four fired .380 auto caliber cartridge cases
7 that were fired by that pistol, Model 51, Serial No.
8 P-A48064, he says in here that "Test specimens from Item 21
9 were submitted for entry into the intubated ballistics
10 identification system. Should any hits be developed
11 against these entries, you'll be notified." He says,
12 "Please retain Item 21 for a minimum of two years in order
13 to maintain its availability for any future comparisons
14 that may be dictated by I. B. I. S. activity."

15 THE COURT: Well, let me look at that.

16 MR. ROBINSON: If I may approach.

17 THE COURT: Well, it says Item 6 through 9, four fired
18 .380 auto caliber cartridge cases, says Items 6 through 9
19 were fired by Item 21, being the pistol.

20 Where were the cartridge cases recovered?

21 MR. BULSA: At the crime scene.

22 THE COURT: Okay. Well, I don't see anything in this
23 report that indicates the bullet from the -- from Mr. Evans
24 was compared with those other bullets. Was that done?

25 MR. BULSA: I'm not sure exactly what you mean as far

1 as --

2 THE COURT: Well, I thought I understood earlier that
3 I was told that the bullet that resulted in Mr. Evans'
4 death was recovered during the autopsy, that the ballistics
5 expert test fired similar types of ammunition and
6 determined based upon a comparison that the bullet that
7 killed Mr. Evans was fired from the weapon that's in the
8 custody of the state.

9 MR. BULSA: Yes, sir. That would be the --

10 THE COURT: Where is that on here?

11 MR. BULSA: Item 10 and Items 11 through 13, three
12 fired bullets. Two of those three were taken from the
13 victim that stated they were fired by Item 21, the pistol.

14 THE COURT: All right. The three bullet jacket
15 fragments and one bullet core, those are items that were
16 taken during the autopsy from Mr. Evans?

17 MR. BULSA: Well, actually two bullets were taken from
18 the body. Then there were some fragments and another
19 bullet taken from the scene.

20 THE COURT: Well, I'm looking at Item 10, three bullet
21 jacket fragments and one bullet core.

22 MR. BULSA: Yes, sir, and also Items 11 through 13,
23 three fired bullets, because they're all of the bullets and
24 fragments that were recovered either at the scene or from
25 the victim. And all of those were compared to the pistol.

1 THE COURT: Well, which in Item 10 and 11 through 13
2 was recovered from Mr. Evans?

3 MR. BULSA: Those are Item 11 and Item 12 based on
4 what Mr. Whitler has marked.

5 THE COURT: Item 11 and Item 12 were bullets.

6 MR. BULSA: From the victim's body.

7 THE COURT: Recovered from Mr. Evans' body.

8 MR. BULSA: Yes, sir.

9 THE COURT: All right. Mr. Robinson, this test
10 report --

11 MR. ROBINSON: You've got my copy.

12 THE COURT: All right. What have you got?

13 MR. ROBINSON: These are the other ones, other
14 reports.

15 THE COURT: So that's not this one.

16 MR. ROBINSON: No, sir.

17 THE COURT: All right. Well, anyway, this says Items
18 11 through 13.

19 Mr. Bulsa says -- you say 11 and 12 were recovered --

20 MR. BULSA: Yes, sir.

21 THE COURT: -- from Mr. Evans's body. And this result
22 says Items 11 through 13 were fired by Item 21. So that
23 includes the two bullets found in Mr. Evans. Item 21 being
24 the pistol, do you want to look at it again?

25 MR. ROBINSON: Yes, if I could for one second.

1 THE COURT: According to that report, 11, 12 and 13
2 were bullets fired by the pistol, being Item 21.

3 Mr. Bulsa says Items 11 and 12 were bullets recovered
4 from Mr. Evans' body. I'm assuming Dr. Wren would be the
5 person to connect that.

6 MR. ROBINSON: May it please the Court. The bullet
7 that they have in their evidence there, those are the
8 bullets, I believe, that were taken from the victim in this
9 case. They can match that with the gun that they found in
10 the pawn shop in Columbia. I think that's what they're
11 trying to say. Is that correct?

12 THE COURT: Eleven and 12. Items 11 and 12 shown on
13 that report are bullets recovered from Mr. Evans' body at
14 the autopsy.

15 Agent Whitler says that those items were fired by that
16 pistol that the state has in their possession. In other
17 words, they've got -- they've got the bullets that killed
18 Mr. Evans. They've got the weapon that fired it.

19 MR. ROBINSON: Yes, sir. All right.

20 THE COURT: What I'm saying is if Agent Whitler or
21 Lieutenant Defreeze or whomever is qualified as an expert
22 can say that the bullets found in the possession of the
23 defendant are of similar manufacture and type as those that
24 were used in this crime and that those found in the custody
25 of the defendant are capable of being fired, not only are

1 they similar but they're capable of being fired, from that
2 Item 21, the pistol, then that would make that evidence
3 relevant.

4 MR. ROBINSON: Your Honor, I don't think that they
5 have anyone that can say that that is the bullets that were
6 found with Mr. McDowell in North Carolina, are the same
7 bullets that were found in that gun.

8 THE COURT: Well, no. They're not. Nobody can say
9 that because you don't know if they're the same bullets
10 unless they're in the gun. That doesn't mean they're not
11 capable of being fired from the gun.

12 In other words, you could have a box of shells at your
13 house. In other words, you could have gone and committed a
14 robbery at a convenience store with a pistol with two
15 bullets in it. Well, if you've got similar ammunition at
16 home, that might be relevant. That's all I'm saying.
17 It's --

18 MR. ROBINSON: I think my, my objection that I would
19 have as far as allowing them any sort of leeway as far as
20 talking about these bullets -- and he has said, Your Honor,
21 Mr. Bulsa has said, he did does not have the officer that
22 got these bullets in North Carolina. There were a lot
23 of -- I mean, I'm sure there were many .380 bullets that
24 were made.

25 THE COURT: Well, understand he's not, he's not going

1 to introduce as I understand, he's not going to introduce
2 the bullets.

3 He's just -- his argument relates to this statement,
4 on the last page that your client made not be redacted,
5 because it reflects that there were bullets, .380 bullets,
6 recovered from him at the time of his arrest.

7 He's just asking that that not be redacted, that that
8 be allowed to stay in the statement.

9 MR. ROBINSON: And I would have a serious concern with
10 that and a serious objection to that.

11 The basic reason that a prejudicial value of allowing
12 that in as far as that evidence is in with 12 persons who
13 are laymen in this case, I think the prejudicial value
14 would far outweigh the probative value in this case as far
15 as being prejudicial against my client.

16 THE COURT: Well, I haven't read the statement, but is
17 it more prejudicial than that statement?

18 MR. ROBINSON: I think it's probably the most
19 prejudicial part of that statement, Your Honor, that
20 particular part there.

21 THE COURT: All right. Well, let me review the
22 statement, and then I'll make that determination.

23 MR. ROBINSON: Yes, sir, Your Honor.

24 THE COURT: All right. What else?

25 MR. BULSA: Your Honor, we've got the officer during

Mike Woodcock (In-camera)
Direct examination by Mr. Bulsa

1 the interview before the polygraph.

2 THE COURT: Okay.

3 MR. BULSA: We're attempting to get it set up, the
4 specific portion.

5 THE COURT: Okay. Go ahead and set it up.

6 (Pause.)

7 THE COURT: Are y'all ready to show that video?

8 MR. BULSA: Yes, sir. The state calls Mike Woodcock.

9 MIKE WOODCOCK, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BULSA

12 Q Okay. Officer Woodcock, is your title a detective?

13 A Lieutenant now. It was a senior investigator at the
14 time this happened.

15 Q Okay. And I'm going to go into this now but not in
16 front of the jury. But part of your duties are to
17 administer polygraph tests?

18 A That's true.

19 Q And did you meet with Mr. Roy McDowell to conduct such
20 tests?

21 A Yes, I did.

22 Q And before you begin speaking with him do you provide
23 him with his Miranda warnings?

24 A Yes.

25 (Rights form marked State's Suppression Exhibit No. 4

Mike Woodcock (In-camera)
Direct examination by Mr. Bulsa

1 for Identification.)

2 Q I show you State's Exhibit No. 4. Is that a document
3 you used before you interviewed Mr. McDowell?

4 A Yes, it is.

5 Q And does that set out his rights for him?

6 A Yes, it does.

7 Q And did you read those to him?

8 A Yes, I did.

9 Q Okay. Now, we're not going to play the video, but if
10 we needed to, that process is actually on this video tape,
11 is that correct?

12 A Yes, sir.

13 MR. BULSA: If I can, let me get this video tape
14 marked.

15 (Video marked State's Suppression Exhibit No. 5 for
16 Identification.)

17 Q I show you what's been marked State's Exhibit No. 5
18 for this hearing. Do you recognize that video tape?

19 A Yes. It is. I do.

20 Q And is that a complete tape of the interview with
21 Mr. Lynch or McDowell?

22 A Yes, it is.

23 Q Now, this entire process, how long does it usually
24 take?

25 A It takes at least about two hours or more.

Mike Woodcock (In-camera)
Direct examination by Mr. Bulsa

1 Q And for this hearing only, what do you do before you
2 actually administer the test?

3 A The first thing I do is advise them of their rights.
4 We do another consent form. I advise them what they're
5 here for, to talk about.

6 And then I do what's called a pretest interview where
7 I go over the subject's health and make sure there's
8 nothing wrong with them, per se.

9 And then I go over basically a little bit of life
10 history getting to know the subject a little bit. Then I
11 go over the actual facts of the case with the subject. And
12 then I go over the actual questions that will be asked on
13 the test.

14 At that time usually we take a bathroom break and we
15 come back, and if they didn't ask for one before that. And
16 then we continue from there. Usually do an in-test phase.
17 And depending on what happens, we do a post test about the
18 interview.

19 Q What's the reason for the extensive pretest interview?

20 A It's to get the subject ready to take the test.

21 Q Make him comfortable?

22 A It's to, yeah, alleviate a lot of the fears and to
23 make them ready to take the test.

24 Q Now, did you review the video tape in this case?

25 A Yes. I have seen the video tape.

Mike Woodcock (In-camera)
Direct examination by Mr. Bulsa

1 Q Okay. And do you recall there being one occasion when
2 he took a break and left the room and then you began
3 speaking to him again?

4 A Yes. He asked for a bathroom break. We came back,
5 and I wanted to clarify an issue with him. I asked him a
6 question, yes.

7 MR. BULSA: And I'm going to display that portion for
8 the Court.

9 (Whereupon, the tape was played for the Court.)

10 Q Now, if you would, explain to the Court what took
11 place there.

12 A In the previous to that I'd -- I need to clarify what
13 their intent was when they were out there looking for
14 people.

15 They had gone out originally according to the
16 defendant to buy or get marijuana for another subject who
17 had not been home at the time. And I was a little bit
18 confused the way he was talking of whether they were going
19 to rob someone or not, and I wanted to clarify that. So
20 that's why I asked him that question after we came back
21 from the break.

22 Q Thank you. Answer any questions Mr. Robinson has.

23 MR. ROBINSON: May it please the Court.
24
25

Mike Woodcock (In-camera)
Cross-examination by Mr. Robinson

1 CROSS-EXAMINATION

2 BY MR. ROBINSON

3 Q Officer Woodcock, you had a chance a moment ago to
4 watch this video tape, didn't you, just a second ago?

5 A Right.

6 Q And you've reviewed this video tape pretty much
7 in-depth, haven't you?

8 A Yes.

9 Q Now, wouldn't you agree that when you were asking
10 these questions of him that you were a little confusing
11 with these questions? You wouldn't agree with that?

12 A No. I was trying to make them as clear as possible.

13 Q Really? So when you, when you start a question and
14 then add another question onto it like you did in this
15 video, you're saying that that was -- that was not
16 confusing?

17 A I was trying to state it in the best way I could at
18 the time. I was trying to understand what he was trying to
19 tell me.

20 Q Now, you're an officer. Not only are you a polygraph
21 officer. You're also a detective or an officer with the
22 Spartanburg County Sheriff's Office, aren't you?

23 A Correct.

24 Q Now, I want to look at -- I'm going to ask the
25 solicitor to play this video one more time. And I want you

Mike Woodcock (In-camera)
Cross-examination by Mr. Robinson

1 to present some commentaries for it why you don't think
2 that's a little bit confusing -- you don't think that's
3 very confusing to Mr. Lynch in this case when you were
4 asking these questions.

5 (Whereupon, the video tape was played.)

6 Q I want to pause this for one second. Going back,
7 what's that exactly, is that on that chair?

8 A That's a movement sensor.

9 Q And did you explain to Mr. McDowell what that was?

10 A He asked what it was, and I said it's a movement
11 sensor.

12 Q All right. Okay.

13 A Now I return from the bathroom break.

14 (Whereupon, the tape was played.)

15 Q Okay.

16 A That followed a long conversation previous in this
17 about exactly what had happened, conversations back and
18 forth, pinning him and the other subjects. And I was just
19 trying to get clear that when he left the vehicle that was
20 the intent.

21 Q Wait. Well, wait a second.

22 You would agree that when you're, when you're -- the
23 answer he gave to this -- you asked the question, and you
24 asked another question on top of that, didn't you, just a
25 second ago on this?

Mike Woodcock (In-camera)
Cross-examination by Mr. Robinson

1 A I was trying -- the way I was phrasing it, I was
2 trying to make sure I was clear to him. I wasn't trying to
3 trip him up or anything. I wanted to get a basic. I
4 wanted to get a clear answer so he knew and understood what
5 I was talking about.

6 Q But you would agree that you actually answered -- you
7 actually asked him two questions there, wouldn't you? You
8 actually started one question on your, on, on the first,
9 the first. And then you asked another question at the same
10 time, didn't you?

11 A I was asking the same question. I was just clarifying
12 myself. I wasn't trying to ask two questions at once.
13 That's how it sounds. That's not -- I don't quite get
14 that. In the context of our discussion, he did not appear
15 to be confused at that time. He understood what I was
16 talking about.

17 Q Why didn't you, why didn't you -- but you didn't go
18 back to make sure he understood the question you asked, the
19 compound question you asked. You didn't go back and ask
20 him whether he understood the question again, did you?

21 A He appeared to. I mean, he explained it. So I didn't
22 see the need to go back and ask him.

23 Q Now, when you do this, when you do this pretesting
24 polygraph test, you're anticipating that you're going to be
25 bringing this to trial, aren't you?

Mike Woodcock (In-camera)
Cross-examination by Mr. Robinson

1 A No.

2 Q You're anticipating that, aren't you?

3 A No. This is mainly for investigative purposes.

4 Q Investigative purposes. Okay. But Mr. --

5 Mr. McDowell didn't admit to you that he went to rob
6 anybody, did he?

7 A I asked him what his intent was. And what he said
8 there, basically went to rob someone. That was why I
9 got --

10 Q But let's go back there to your question. That's not
11 the question you asked him.

12 A I asked him when they got out of the car, they're
13 going to, they're going to rob someone. And he said
14 basically.

15 MR. ROBINSON: Your Honor, can I play back the
16 question he asked there the second -- it's a little --

17 THE COURT: Turn it up too if you can.

18 THE WITNESS: Yes. Please.

19 MR. BULSA: Turn the volume up.

20 (Whereupon, the tape was played.)

21 MR. ROBINSON: That's all the questions I have of this
22 witness, Your Honor.

23 MR. BULSA: Nothing further.

24 THE COURT: You can step down.

25 How, how is that testimony to be presented? Are you

1 planning on just asking Mr. Woodcock what was stated, or
2 are you planning on showing this video?

3 MR. BULSA: I was intending to seek to offer the
4 video; in the alternative, offer through the testimony.

5 MR. ROBINSON: Your Honor, I'm going to have an
6 objection to anything that's showing in a prison garb like
7 that. I think it could be very prejudicial to Mr. Lynch.

8 THE COURT: Well, he's in custody. That's what they
9 wear.

10 MR. ROBINSON: I understand, Your Honor.

11 THE COURT: Well, quite frankly, I just think it
12 makes -- it's going to be clearer for the benefit of the
13 jury if the video is not played and -- in other words, the
14 video is present if anything needs to be -- if the
15 defendant wants to offer it to establish something else.

16 But, otherwise, you know, I fear that the jury might
17 be confused that this was the interview resulting in a
18 statement but you're only playing a very small portion of
19 it and most of it's being left out. And of course I
20 understand why we're not playing it. But it seems to me
21 that the presentation would make more sense if Officer
22 Woodcock is simply asked if he conducted an interview of
23 the defendant, and then you can go into that statement.

24 If the defense wishes to play that because they feel
25 like the question was confusing or misleading or that sort

1 of thing, I don't have any objection to the defense playing
2 it for whatever benefit they might be able to derive. But
3 I don't see any, I don't see any disadvantage to the
4 state's presentation that the video not actually be played.
5 I mean, there's no video of any other statement, so.

6 MR. BULSA: Right. That's fine with the -- that's
7 fine with the state, Your Honor. We won't offer it unless
8 the defense wants to for the jury.

9 THE COURT: Okay.

10 MR. ROBINSON: Your Honor, what I would ask for is
11 that the -- I don't know whether we're planning on putting
12 a case up anyway. I don't know if we're going to put any
13 evidence up. But I think that's going to make it so that
14 we have to put this in potentially. How about some --
15 would the Court entertain some --

16 THE COURT: I can't, I can't, you know, arrange the
17 case so that you don't have to prejudice yourself in any
18 way.

19 I mean, if you want to present it, you'll have to
20 present it. I mean, the state doesn't have to present
21 evidence just because it exists and it's relevant and
22 probative.

23 MR. ROBINSON: Yes, sir.

24 THE COURT: And I don't think they have to introduce
25 this video just because there is one. Officer Woodcock can

1 testify as to what occurred.

2 I'm just saying clearly if you don't believe that
3 Mr. Woodcock is fairly representing what occurred or fairly
4 stating a question that was asked or a response that was
5 given or you think it can be subject to another
6 interpretation, then you've got every right to introduce
7 that video.

8 I'm trying to avoid. You know, I don't care whether
9 that video is introduced or not. I'm trying to avoid
10 complications with the jury looking at a video with the
11 this defendant sitting there and we don't know what the
12 context is. And the jury can't know that context.

13 MR. ROBINSON: We agree. Thank you, Your Honor.

14 MR. BULSA: Your Honor, that's the state's showing as
15 far as this issue on all the statements.

16 THE COURT: Okay.

17 MR. BULSA: I think that wraps up the pretrial matters
18 as well.

19 THE COURT: All right. Mr. Robinson, any evidence or
20 testimony you want to present on the issue of the
21 admissibility of that statement?

22 MR. ROBINSON: No, sir, Your Honor.

23 THE COURT: Any argument you want to make for its
24 exclusion?

25 MR. ROBINSON: Your Honor, may it please the Court.

1 I think the Court could hear the video and what was,
2 what was said.

3 It was obviously a little bit confusing in terms of
4 how he couched his questions and what he advised, what he
5 told Mr. McDowell in this case.

6 It was very confusing to see what he said, because he
7 made -- because he had one question that went -- I mean,
8 the answer started another question at the same time. And
9 he says it was to, his was to make sure he understood what
10 was going on. But I think that if the Court could see that
11 it was, that it could present itself as being confusing to,
12 to Mr. McDowell.

13 THE COURT: Well, I don't know. I mean,
14 Mr. McDowell-Mr. Lynch -- he didn't say it was confusing on
15 that tape.

16 I mean, he didn't ask Mr. Woodcock to clarify it or
17 repeat it or he didn't understand it. He just answered it
18 just about as quickly as you and I are conversing here.

19 MR. ROBINSON: Yes, sir.

20 THE COURT: It was certainly a leading question; but I
21 don't think there's any prohibition against leading
22 questions, although it might not always be the best way to
23 get candid information. But there's nothing wrong with it.

24 All right. I'm going to allow the admission of that
25 testimony. Mr. Woodcock will testify to it. And of course

1 there'll be no reference to the purpose for which that
2 interview was being conducted other than to elicit that
3 information.

4 All right. Anything further before we have the jury
5 brought in?

6 MR. BULSA: Nothing from the state.

7 Do you want us to turn this off? We won't be using it
8 during the opening.

9 MR. ROBINSON: We have nothing more at this time.

10 THE COURT: All right. Are we ready for the jury?

11 MR. BULSA: We are ready. This is some pictures we
12 were agreeing on. But we'll mark them. We'll mark them
13 once we use them with these first few witnesses and then
14 we'll --

15 THE COURT: Okay. Bring the jury in. Ask Ms. Oates
16 to take the foreperson's seat.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: All right. Ladies and gentlemen, we are
20 ready to begin with the trial of this case for which you
21 were selected.

22 And, Ms. Oates, I'm going to ask you to serve as the
23 foreperson of the jury. Now, as the foreperson you're
24 going to have three specific duties that none of the other
25 jurors will have.

1 Number one, you're going to be asked to serve as the
2 spokesperson. And so if during the trial something arises
3 that needs to be brought to my attention, that is you or a
4 fellow juror has some difficulty or problem or question, if
5 you'll let the bailiff know, he'll let me know, and I'll
6 address it.

7 Secondly, you'll be asked to preside over the jury
8 deliberations when the time comes at the trial's conclusion
9 after all of the evidence has been received and I've
10 instructed you on the law that's applicable in the case.

11 When you go back to begin jury deliberations, you'll
12 be asked to preside over that process in the jury room
13 simply to ensure that those deliberations are carried out
14 in some orderly fashion.

15 Thirdly, you'll be asked to actually write the
16 verdicts or the decision of the jury. You'll do that on a
17 verdict form that I'll provide you at the trial's
18 conclusion on which you will indicate the jury's unanimous
19 decision as it relates to each of the separate indictments.

20 Now, the foreperson has those specific duties that
21 I've just indicated, but that does not in any way mean that
22 she is any more important than any of you other jurors
23 because the decision, that is the verdict of a jury panel,
24 is the unanimous consensus opinion of all 12 jurors. And
25 so all of you are going to have an equal say and an equal

1 vote in what the ultimate decisions are to be in this case.

2 Someone simply has to be delegated those
3 responsibilities that I have just indicated, and I have
4 delegated those to Ms. Oates in appointing her as the
5 foreperson. But all of you jurors are equally important so
6 far as the ultimate decision in this case is concerned,
7 because, as I have stated, the verdicts have to be
8 unanimous. All of you must be in agreement.

9 Now, Mr. Dean, you've been selected as an alternate
10 juror. And the function of an alternate is to take the
11 place of one of the original 12 jurors if during the trial
12 of this case one of these original 12 cannot continue to
13 serve for some reason, that is if an emergency or some
14 other reason prevents a juror from continuing to serve in
15 the case.

16 You would be called upon to take that person's place.
17 In that event you become the 12th juror. And if that
18 occurs, then you would also participate in the jury
19 deliberations at the trial's conclusion.

20 If however when the time comes for jury deliberations,
21 if the original 12 are able to participate in that
22 function, then your service would end. And you would not
23 participate any further, because no more than 12 jurors are
24 permitted to engage in jury deliberations.

25 But it is important that you pay just as careful

Jury sworn

1 attention as we ask of all of the jurors in this case
2 because it does occur from time to time for one reason or
3 another one of these original 12 may be called away and
4 unable to continue. In that event you become the 12th.

5 So we do appreciate your participation as an alternate
6 juror, just as we appreciate the participation of all of
7 you jurors who have been selected for the purpose of
8 deciding the verdicts in this particular case.

9 You may swear the panel.

10 (Whereupon, the jury was duly sworn.)

11 THE COURT: All right. Ladies and gentlemen, as you
12 know, you've been selected to decide the verdicts in the
13 case of the State vs. David Roy Lynch. He also goes by Roy
14 David McDowell -- what did you tell me?

15 MR. ROBINSON: McDowell, Your Honor.

16 THE COURT: McDowell. Excuse me. Roy David McDowell,
17 Jr.

18 Mr. Lynch or Mr. McDowell has been brought to this
19 court by way of documents called indictments. The
20 indictments are those documents that I read from prior to
21 your selection to inform you as to who the defendant was
22 and as to what the charges are that have been brought
23 against him.

24 The indictments set forth those charges. And, as I
25 told you, the charges that the state has brought against

1 the defendant include the crimes of armed robbery, assault
2 and battery with intent to kill and murder.

3 The allegations supporting those charges are contained
4 in the indictments, but the indictments are not evidence in
5 the case. And the indictments aren't proof of anything.

6 The indictments are simply the means by which any
7 defendant is brought into this court and is formally
8 accused of a crime. And the indictments of course serve to
9 put a defendant on notice as to what crime the state claims
10 that they have committed. But the indictments themselves
11 are not proof of anything. They do not establish any fact
12 in this case.

13 Now, as to the charges that are set forth in each of
14 those indictments and as to the allegations contained
15 therein the defendant has entered a plea of not guilty.
16 And, as I told you, a plea of not guilty places upon the
17 state the burden of proving the allegations in each of
18 those indictments, the burden of proving each of the
19 essential elements that makes up the crimes that are
20 alleged in each of these indictments; and therefore the
21 burden is on the state because they bring the charges
22 against another to establish that person's guilt beyond a
23 reasonable doubt.

24 Every person who is accused of a crime, and it doesn't
25 matter whether it's serious or less serious -- every person

1 accused of a crime is presumed to be innocent of that
2 charge.

3 That presumption of innocence remains with any
4 defendant, as it does with this defendant, from the time
5 that he is placed under arrest and throughout the course of
6 the criminal process and even throughout the course of the
7 actual trial in the case.

8 That presumption of innocence will be with Mr. Lynch
9 even at the time that you go back into your jury room at
10 this trial's conclusion to begin with your deliberations in
11 the case.

12 That presumption of innocence will be with him there,
13 and it will remain with him forever unless you 12 jurors
14 unanimously determine that he's no longer entitled to that
15 presumption of innocence.

16 That is after you have carefully considered all of the
17 evidence in the case, and from that evidence you've decided
18 the facts, and after deciding the facts you apply the law
19 that I will provide you, if you 12 jurors unanimously
20 determine that his guilt as to one or more of these crimes
21 has been proven beyond a reasonable doubt, then he would no
22 longer be entitled to that presumption of innocence as it
23 relates to that particular charge.

24 But it is only if, unless and until the state
25 satisfies you of the defendant's guilt beyond a reasonable

1 doubt that the defendant would no longer be entitled to
2 that presumption of innocence.

3 Now, the way the trial will proceed is that in a few
4 minutes the lawyers are going to address you in what are
5 called opening statements.

6 There are two occasions in the trial of a case where
7 lawyers are permitted to address the jury, and that is at
8 the beginning of the trial before any evidence has been
9 introduced and then again at the conclusion of the trial
10 after all of the evidence has been received.

11 Please notice however, as I've told you, the
12 statements occur before and after the evidence. And so the
13 lawyers' statements are not evidence in the case. You
14 should not consider any statement that a lawyer makes as
15 being any evidence upon which you will base your decision.

16 The lawyers aren't witnesses to anything. They're not
17 going to be telling you anything about this case that they
18 know of their own personal knowledge or perception.
19 They're not going to take the witness stand. They're not
20 going to testify under oath. They're not going to be
21 subjected to direct and cross-examination as each witness
22 will be.

23 And so what the lawyers tell you in their statements
24 is not evidence in the case. But you should listen to what
25 they have to say because those statements do serve a

1 purpose.

2 The opening statements will serve to provide you with
3 a basic understanding as to what this case is about so that
4 you'll have some context in which to place the evidence
5 that we will be receiving shortly thereafter.

6 The closing statements allow the lawyers an
7 opportunity to discuss with you the evidence you have seen
8 and heard during the trial of the case. And through that
9 discussion each will have an opportunity to try to persuade
10 you or to convince you that that evidence does or does not
11 support a particular decision.

12 And it's in between the opening and the closing
13 statements of the lawyers that we actually receive the
14 evidence upon which you will make your decision.

15 The state, as I've told you, has the burden of proof,
16 and so the state is obligated to present evidence. They
17 have to present evidence in order to prove the defendant's
18 guilt to your satisfaction. So they will go forward first
19 in their presentation of evidence.

20 After the state has concluded with their presentation
21 the defendant has the same opportunity to testify and to
22 present evidence if he wishes to. But he is not required
23 to.

24 He's not obligated to because the burden is never upon
25 a defendant to prove that he is not guilty. The burden is

1 on the state because they brought the charges to prove that
2 he is guilty. And that's because in many cases a defendant
3 might not even be able to prove his innocence to the
4 satisfaction of a jury.. And therefore the burden is always
5 upon the state. But a defendant is afforded an opportunity
6 to present evidence should that defendant wish to do so.

7 So after all of the evidence has been received and
8 after you've heard the final summations of the lawyers, I
9 will then instruct you fully on the law as it relates to
10 cases of this nature.

11 Then you'll be asked to go back into the jury room and
12 begin with your deliberations in this case. And through
13 that process you 12 jurors are simply going to be called
14 upon through the exercise of good judgment and common sense
15 conscientiously applied to the testimony and evidence in
16 the case to decide what you believe to be the true facts as
17 they relate to these particular allegations.

18 Once you decide those facts, you'll then apply the law
19 that I will provide you, and you will determine whether or
20 not the state has proven the defendant's guilt beyond a
21 reasonable doubt. And if the state has, then your verdict
22 would be guilty. And if they have not, then your verdict
23 would be not guilty.

24 Now, of course you do have three separate charges.
25 And while the state alleges that they all arose out of one

1 particular event or course of events that they claim
2 occurred back on December the 30th of 2004, there are three
3 separate charges. And you'll be called upon to arrive at
4 three separate verdicts as they relate to those three
5 separate charges.

6 And depending upon your determination of fact and your
7 application of the law, those verdicts may be the same or
8 they may be different. That will depend upon your decision
9 as to the facts and then your application of the law to
10 those facts.

11 It's important that you give every witness the same
12 degree of attention as they testify because oftentimes
13 during the course of a trial there is a conflict in
14 testimony. And sometimes where there's a conflict in
15 testimony if it relates to a material issue, you've got to
16 determine what's the most credible evidence. You will
17 decide what's the most credible testimony.

18 In your assessment as to an individual witness'
19 credibility you are permitted to believe as much or as
20 little of what a witness has testified to as you deem is
21 appropriate.

22 So it's your prerogative to believe everything that a
23 witness testified to, or to believe none of it. And, at
24 the same time, you may believe one portion of a witness'
25 testimony and reject some other portion of that same

1 witness' testimony.

2 And you do that simply by judging that witness'
3 testimony in light of not only that witness' own testimony
4 but in light of all of the evidence presented during the
5 trial of the case and the probabilities and the inherent
6 reliability or unreliability of a particular witness'
7 testimony. But you've just got to pay careful attention so
8 that you'll be in a proper position when you go back to
9 deliberate to fairly assess and evaluate each witness'
10 credibility.

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

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

22 So I do want to thank you in advance for your
23 participation, as well as your careful attention. I would
24 ask that you please give the lawyers your attention now as
25 they give you their opening statements..

Opening statements

1 Ms. Ganss.

2 MS. GANSS: May it please the Court, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. GANSS: Mr. Robinson.

5 We're here today because a little over two years ago,
6 actually it was December the 30th of 2004, 20-year-old Lee
7 Evans was shot twice, in the back and in the arm. And he
8 died.

9 We are here today because another man, Leon Young --
10 you'll hear from him during the course of this trial.
11 He'll take the stand.

12 He was walking that very night on the same street
13 where 20-year-old Lee Evans was shot and killed. Minding
14 his own business, he too was shot. He survived, and he's
15 able to go and get help. That's what occurred
16 December 30th of 2004.

17 But let's back up just a little bit. While Lee Evans
18 was there on that road at Sunnys Glen Drive -- it's in the
19 Greer area, the portion of Greer that's here in Spartanburg
20 County -- what's he doing there? He's sitting in his car,
21 20-year-old Lee Evans, and he's on a cell phone. He's
22 talking to his girlfriend. And you'll hear from her. He's
23 talking to his girlfriend in his car parked outside his
24 aunt's house minding his own business.

25 Death was going to meet him that night. What brought

Opening statements

1 it on? Earlier that evening a group of friends if you can
2 call them that, they get together. There are five of them.

3 Now, I'm going to rattle off these names, because
4 you're going to hear from some of them. Alicia Margaret
5 Lemke, Jessica Nicole Holmes, David Weatherspoon. Two
6 other individuals are there, Antwon Salters and the
7 defendant, David Lynch, also referred to as or known as Roy
8 David McDowell. But those five individuals.

9 They get together early December 30th of 2004 and they
10 decide they want to go get some drugs. And to do that they
11 all get in Alicia Lemke's car, and they got out to
12 Sunnyglen Drive looking for drugs.

13 They are going to get those drugs with guns. And two
14 people in the car are armed with guns. And those two
15 people are Antwon Salters and, again, the defendant David
16 Lynch.

17 They head over to Sunnyglen Drive, and they're looking
18 for someone named Shad. You might hear that name. They go
19 by the house where Shad is supposed to live. Shad is not
20 there.

21 But who is on Sunnyglen Drive December the 30th of
22 2004? Twenty-year-old Lee Evans in his car on his cell
23 phone talking to his girlfriend minding his own business.

24 While Alicia Lemke, Jessica Nicole Holmes and David
25 Weatherspoon stay in the car two people get out -- Antwon

Opening statements

1 Salters and the defendant, David Lynch.

2 They approach Lee Evans' car. Suddenly everyone hears
3 gunfire. Antwon Salters and the defendant, David Lynch,
4 race back to the car. That car with those five individuals
5 in it takes off.

6 Lee Evans can't move. Lee Evans is dead on Sunnyglen
7 Drive. Leon Young who had been shot also is able to go and
8 get help. When help arrives they see the car where Lee
9 Evans had been.

10 The window had been smashed in. Lee Evans had been
11 shot twice, once in the arm, and in the lower back. And
12 that bullet, you'll hear testimony, traveled up to his
13 heart causing his death. Two bullets will later be
14 recovered from Lee Evans' body.

15 Missing from that scene where Lee Evans is lying
16 outside of that car is the cell phone Lee Evans was talking
17 to his girlfriend on. Also missing from that scene is the
18 ring Lee Evans always wore. Lee Evans was not only
19 murdered December the 30th of 2004. Lee Evans was robbed.

20 Leon Young. He's the victim who is going to tell you
21 he's the victim of an assault and battery with intent to
22 kill, minding his own business, shot at suddenly.

23 At the end of this trial the judge is going to talk to
24 you about the law. All I want to do is give you something
25 brief to think about, a guiding point if you will, to carry

Opening statements

1 with you throughout this trial.

2 And it's something called the hand of one is the hand
3 of all. I told you earlier five people get in a car and go
4 looking for drugs, going to get it from a guy named Shad.

5 They see Lee Evans in his car. Two individuals get
6 out armed with guns and go to Lee Evans' car. Two
7 individuals leave Lee Evans' death. Those individuals are
8 equally responsible for Lee Evans' death, equally
9 responsible for Leon Young's injuries.

10 I'll be prosecuting this case alongside Derrick Bulsa.
11 And what we're going to ask you to do in this case is just
12 come in with your common sense. Listen to the evidence
13 that's presented before you over the course of today,
14 tomorrow, and just apply your common sense, who's doing
15 what. That's it. That's all we ask you to do. Thank you
16 for your time.

17 THE COURT: Mr. Robinson.

18 MR. ROBINSON: May it please the Court. Counsel.

19 Good afternoon. My name is Scott Robinson. It's my
20 pleasure to represent Mr. David McDowell.

21 Let me explain something as far as the name goes.
22 He's in a pretty large family. His family is sitting
23 behind him here. There are McDowell's and there are Lynches
24 in the family. That's where there's a little bit of a
25 difference as far as the police also. It comes from family

Opening statements

1 gatherings, family get-togethers and things like that.

2 And also to my left is my investigator, Melvin
3 Cunningham, with my client. My client's family is sitting
4 in a row, two rows back there -- his sisters, brothers and
5 also his parents.

6 Who killed Mr. Evans? Who shot at Mr. Young? Who
7 robbed Mr. Evans? Ladies and gentlemen of the jury, on
8 November the 28th of 2006 the person who did this pled
9 guilty to these charges in this courthouse. His name was
10 Antwon Salters. He pled guilty to the murder of Lee Evans,
11 to the robbery of Lee Evans, and he also pled guilty to
12 shooting at Mr. Leon Young who is sitting in the courtroom
13 today.

14 Ladies and gentlemen of the jury, Antwon Salters and
15 Lee Evans were connected to the same girl. They both had a
16 connection and were either having relations or staying with
17 a girl named Martena Parks. And that is going to be a
18 witness that's going to be presented, and she is going to
19 talk about that relationship.

20 But Mr. Salters was mad. He didn't like the fact that
21 Ms. Park was also sleeping with Mr. Lee Evans. You're
22 going to hear testimony about this in this case to be
23 presented.

24 And at that night back in 2004 he saw that car with
25 Lee Evans and he decided to take matters into his own hands

Opening statements

1 to make sure Lee Evans paid for monkeying around with his
2 girl, Martena Parks. And he did that. He shot Mr. Evans
3 twice. He shot at Mr. Young. And he also took items from
4 Mr. Evans.

5 That's who the murderer in this case is. That's who
6 murdered Lee Evans, that's who murdered -- that's who shot
7 at Leon Young, and that's who robbed Lee Evans. The person
8 who did that was Antwon Salters.

9 Now, the state has brought up a little bit of law in
10 this case as far as something called the-hand-of-one-and-
11 the-hand-of-all.

12 And what we can tell you at this point in this, at
13 this trial -- it's just opening statement -- is that in
14 order to achieve this hand-of-one-hand-of-all, it's not
15 just people being in your presence or being associated with
16 somebody. There's got to be a common design associated.
17 They have to plan it together. That's what the law is in
18 this state.

19 But, again, the judge is the ultimate person of the
20 law, and he will give you the law at the end of this case.
21 I wanted to address that because that was brought up in
22 opening statement.

23 Now, we know that this is a very big inconvenience for
24 y'all to be here. You're away from your jobs and your
25 family, things that you do. This is not the most enjoyable

Opening statements

1 place to be. But outside of war time, it's one of the
2 highest emblems of citizenship, is to sit in a jury and to
3 use your common sense and to look at a case.

4 Now, you know, we all read the newspaper. We, we take
5 newspapers. We listen to the news. We, some of us, get on
6 the internet to look up news stories in the Greenville
7 News, the Spartanburg Herald, different papers in the area.

8 And sometimes we see that law enforcement has arrested
9 someone or caught someone that you hear about. And there's
10 an inclination that you have, a presumption that you have,
11 that, okay, they caught the guy or girl, they got them.
12 There's a presumption that you make when you see that.

13 But, ladies and gentlemen of the jury, as the judge
14 just informed you a second ago, that's not -- that has no
15 place in this courthouse or in this courtroom, because in
16 this case in this courtroom and in this state David is
17 presumed innocent until proven guilty by the state.

18 What's the standard in this case? The standard is
19 that they have to prove each and every element of each of
20 these charges to your satisfaction beyond a reasonable
21 doubt in this matter.

22 So I would ask you to put aside any presumptions or
23 assumptions you have regarding police officers testifying
24 and so forth in this matter, because he is presumed, as
25 anyone else is that comes before this court or anyone else

La Channet Kelly
Direct examination by Mr. Bulsa

1 that comes and is accused of a crime or anything of that
2 nature -- they are always presumed in this great nation of
3 ours, they're presumed innocent until proven guilty. The
4 judge just informed you of that a minute ago.

5 So I ask you on behalf of David's family who is
6 sitting on the two rows right behind us there, as well as
7 David, I ask you to take all of that into consideration. I
8 would ask you again.

9 I have the same kind of a statement that the
10 prosecutor has. That is use your common sense. And if you
11 use your common sense and you listen to the law as the
12 judge instructs you and you listen to each and every piece
13 of evidence that comes in this case, there can't be but one
14 conclusion, one verdict, and that is not guilty.

15 And, again, as I said before, the person who committed
16 these crimes has already pled guilty to these crimes on
17 November the 28th, to murder, to assault and battery with
18 intent to kill, and to armed robbery. And that individual
19 is Antwon Salters. Thank you very much.

20 MR. BULSA: The state calls La Channet Kelly.

21 LA CHANNET KELLY, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. BULSA

24 Q Good afternoon, Ms. Kelly.

25 A La Channet Kelly.

La Channet Kelly
Direct examination by Mr. Bulsa

- 1 Q Good afternoon.
- 2 A I know.
- 3 Q How old are you?
- 4 A Twenty-one.
- 5 Q And what area of town do you live in?
- 6 A Lyman.
- 7 Q Make sure you speak up. All of these people need to
- 8 hear you. Okay?
- 9 A Okay.
- 10 Q Do you work?
- 11 A Yes.
- 12 THE COURT: You're going to need to speak louder than
- 13 that.
- 14 Q Do you work?
- 15 A Yes.
- 16 Q Okay. Where do you work?
- 17 A At Tele-Tech in Greenville.
- 18 Q How long have you had that job?
- 19 A Three years.
- 20 Q And did you know Lee Evans?
- 21 A Yes.
- 22 Q How did you know Lee Evans?
- 23 A He was my boyfriend.
- 24 Q How long did you date Mr. Evans?
- 25 A For about five years.

La Channet Kelly
Direct examination by Mr. Bulsa

- 1 Q When did you first meet him?
- 2 A We knowed each other as kids like in school. So I
- 3 don't really know an age, but we was young.
- 4 Q Did y'all go to school together?
- 5 A Uh-huh, on up to Byrnes.
- 6 Q Byrnes High School?
- 7 A Uh-huh.
- 8 Q Did Mr. Evans graduate?
- 9 A No.
- 10 Q He didn't?
- 11 A No.
- 12 Q How old was Mr. Evans when he died?
- 13 A He was 20.
- 14 Q Twenty. Do you know the street where he died?
- 15 A Uh-huh, I do.
- 16 Q Okay. Sunnyglen Drive..
- 17 A Yes.
- 18 Q Did someone live across the street from where his car
- 19 was?
- 20 A His aunt.
- 21 Q His aunt. What was her name?
- 22 A Lib. Well, Elizabeth Whiteside.
- 23 Q Make sure you speak up. Okay.
- 24 A I'm trying.
- 25 THE COURT: Try to speak directly into that microphone

La Channet Kelly
Direct examination by Mr. Bulsa

1 and project your voice. Speak like you're talking to
2 somebody in the back of the room.

3 Q So his aunt, Elizabeth Whiteside, was in the house
4 across the street from where his car was?

5 A Yes.

6 Q Did you actually go to the scene?

7 A I did.

8 Q And you saw where his car was.

9 A Yes.

10 Q Now, had you talked to him that evening?

11 A I was talking to him, I guess, at the time that it
12 happened, because I was on my way home from work.

13 Q You were on your way home from work and he was -- did
14 you know he was parked at the time?

15 A No. I didn't exactly where he was at, but I was just
16 on the phone with him.

17 Q Okay. Do you remember the approximate time of evening
18 it was?

19 A It had to be like 8:30 or 8:40, somewhere around
20 there.

21 Q Okay. In the dark hours.

22 A Yeah, at night.

23 Q Okay. What time did you get off work?

24 A Really I'm not sure. I might have gotten off at 8:00,
25 but I think I got stuck on a call or something like that

La Channet Kelly
Direct examination by Mr. Bulsa

1 and I didn't leave out of the building until like around
2 probably like 8:20 or something like that.

3 Q Now, did he call you or did you call him?

4 A I believe I had -- no. He had called me because he
5 wanted me to go to the movies with him. And he was asking
6 me did I want to go.

7 Q Did y'all have plans to do that?

8 A There wasn't any prior plans to it. He just out of
9 the blue asked to go to the movies.

10 Q Were you going to go with him?

11 A I had actually planned to go to a strip show with my
12 cousin, so I was asking him was it okay if I went there
13 instead.

14 Q So did y'all have a long conversation?

15 A We was talking for a while because he was telling me
16 what not to wear and what to do and stuff like that.

17 Q Now, was he working at this time?

18 A At that time, no, he wasn't.

19 Q Was he an athlete?

20 A Yeah.

21 Q What kind of sports did he play?

22 A Football, played football in semipro.

23 Q Okay. Was he on a football team at this time?

24 A Uh-huh. He was with the Seminoles.

25 Q Carolina Seminoles?

La Channet Kelly
Direct examination by Mr. Bulsa

1 A Uh-huh.

2 Q That's a semipro football team?

3 A Yes.

4 Q So he played with that team that season?

5 A Yes. He's been, had been playing with them probably
6 like two or three years.

7 Q Had they won a championship?

8 A They did. He had a ring for it.

9 Q So he got a ring like the pros get when they win a
10 championship.

11 A Yeah. One of them big old black rings they would get.

12 Q Okay. And did he wear that ring?

13 A All the time.

14 Q Now, I want you to tell the jury what occurred while
15 you were talking with Lee on the phone, what you heard.

16 (Pause for the witness crying.)

17 MR. BULSA: Could you give her a Kleenex, Mr. Bailiff?

18 (Pause for witness to receive a Kleenex.)

19 A I think I took too many.

20 But I was, I was talking to him like I was -- it was
21 like you're sure you're going to be okay with that. And,
22 you know, he was like, yes, don't wear anything tight. You
23 know, I was --

24 THE COURT: Ma'am, I'm sorry. But you're not speaking
25 clearly enough for the court reporter to understand what

La Channet Kelly
Direct examination by Mr. Bulsa

1 you're saying.

2 A I was asking him.

3 (Pause for the witness crying.)

4 A I was asking him was he okay with me going. And he
5 was, he was telling me, yeah, just, you know, don't wear
6 anything tight. And I was like -- we was, you know, saying
7 our I-love-yous. And then he was, I guess he was, in the
8 middle of saying something, but he stopped talking. And
9 then I heard a lot of like scuffling and phone, like
10 numbers, being pressed on the phone. Somebody.

11 Like my stomach had dropped. So I thought like he was
12 getting into a fight with somebody. And I kept like
13 screaming his name, but he didn't ever say anything back.

14 And it was some kind of noise. And, I mean, I don't
15 know exactly what the noise was, but it was some kind of
16 noise. And then like all the scuffling and stuff stopped,
17 but the phone was still on.

18 So I kept screaming his name, you know, telling him,
19 you know, Lee, pick up the phone, Lee, what's going on,
20 what happened. And I kept yelling for him to pick up the
21 phone, but he never did.

22 And I probably stayed on the phone for like, I don't
23 know, maybe like five minutes just sitting there. You
24 know, I was just still yelling and listening and trying to
25 see if I heard anything.

La Channet Kelly
Direct examination by Mr. Bulsa

1 Q Let me ask you this. The noise you heard, was it a
2 loud noise?

3 A I mean, I mean, it was loud enough for me to hear, but
4 it wasn't like screaming it out like it was, like it was
5 enough to hurt my ears or anything. But it was just enough
6 to be heard.

7 Q And you weren't sure what that noise was?

8 A No, I wasn't. I mean, at the time I thought maybe the
9 phone dropped or something and, you know, there was noise
10 from that. I don't know what was going on.

11 Q Did you ever hang up?

12 A I did hang up, and I kept trying to call back. I like
13 kept trying for a long time, like, I don't know, probably
14 like ten minutes. I just kept calling back to back, to
15 back, to get him to answer the phone to tell me what
16 happened, but he never did.

17 Q Did anybody answer the phone?

18 A No.

19 Q Did you -- do you know if the phone was found in his
20 car?

21 A I haven't heard anything about the phone being found.
22 Well, yeah. I did hear it. But it wasn't about in his
23 car. They said something about in the bushes or something
24 like in a ditch or something like that.

25 Q How about the ring? Did you ever see his ring again?

La Channet Kelly
Direct examination by Mr. Bulsa

1 A No.

2 Q He was wearing some boots. And do you know if he was
3 found with one of those boots off?

4 A When I got there I seen one of them off, like it was
5 on the ground.

6 Q So you actually saw his body still there.

7 A Yeah. I came while his body was still laying on the
8 ground.

9 Q Where exactly was his body in relation to the car?

10 A It was like right where the door, the driver's door,
11 is. It's like right there.

12 Q Okay. And one boot was on and one boot was off?

13 A Yeah. I seen one on the ground, but his body was
14 covered. So I didn't see the other one.

15 Q Are you familiar with those boots?

16 A I bought them. Yes.

17 Q When did you buy them for him?

18 A They were like brand new. So it's probably like maybe
19 a week or so prior to that day. It wasn't a Christmas
20 gift. It was sometime. It was after Christmas. But I'm
21 not sure of the exact date or anything like that.

22 Q So those were new boots.

23 A They were brand new.

24 Q Okay. Did members of his family come to the scene?

25 A Yeah, and they were actually the ones that called me

La Channet Kelly
Cross-examination by Mr. Robinson
Redirect examination by Mr. Bulsa

1 and told me I needed to come down there, you know, to see
2 what was going on.

3 Q Thank you, Ms. Kelly. Answer any questions Mr.
4 Robinson may have.

5 MR. ROBINSON: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. ROBINSON

9 Q Ms. Kelly, I'm sorry. Just, just one or two
10 questions.

11 Okay. You're not, you're not sure whether or not he
12 had the ring on him that night or not, are you?

13 A No, because I didn't see him, but he always wore it.

14 Q But to your knowledge -- your answer to the question
15 whether or not he had the ring on his hand, you don't know,
16 do you?

17 A No.

18 MR. ROBINSON: That's all the questions I have, Your
19 Honor. Thank you.

20 REDIRECT EXAMINATION

21 BY MR. BULSA

22 Q Just briefly.

23 Did you ever know him not to wear the ring?

24 A No, because he would sleep in it, and he would always
25 wear it.

Peggy Ann Davis
Direct examination by Mr. Bulsa

1 Q Thank you, ma'am. That's all I have.

2 THE COURT: You may step down. Thank you.

3 MR. BULSA: The state calls Peggy Davis.

4 PEGGY ANN DAVIS, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Ms. Davis, introduce yourself to the jury, please.

8 A I'm Peggy Ann Davis. I'm Lawrence Evans' grandmother.
9 Really, I consider myself his mother because I raised him
10 ever since he was a baby, and consider myself his mother.

11 Q Do you live in the Sunnyglen area?

12 A Yes.

13 Q Is that like a community?

14 A Yes.

15 Q Residential area?

16 A Yes.

17 Q How long have you lived there?

18 A We lived there about -- I guess I been there over
19 about 30 years.

20 Q Okay. I'm going to tell you what I told Ms. Kelly.
21 Make sure you speak up, okay, so everybody can hear you.

22 So you lived in a house in that area for about 30
23 years.

24 A Yes.

25 Q Do you own a business, ma'am?

Peggy Ann Davis
Direct examination by Mr. Bulsa

- 1 A My son, my son and I, yes.
- 2 Q Your son owns a business.
- 3 A Uh-huh.
- 4 Q Okay. You work there.
- 5 A Yes.
- 6 Q And what is it?
- 7 A Peggy's Diner.
- 8 Q Okay. So your son named the diner after you?
- 9 A Yes.
- 10 Q And whereabouts is that?
- 11 A 101 in Greer by Blue Ridge, up by Blue Ridge.
- 12 Q How long have you had that business?
- 13 A About four years.
- 14 Q Did Lee work there?
- 15 A Well, when we had Peggy's No. 1, Lee helped some
- 16 there, uh-huh.
- 17 Q Was Lee living with you at the time of his death?
- 18 A Lee had been living with me all of his life really
- 19 because I had him ever since he was about one year old, or
- 20 earlier.
- 21 Q So he had not moved out.
- 22 A No, uh-uh, never lived any place else.
- 23 Q And did he play semipro football?
- 24 A Yes.
- 25 Q And did his team win a championship?

Peggy Ann Davis
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q What did he receive?
- 3 A A, a ring.
- 4 Q A ring. And would he wear that ring?
- 5 A All the time. He wore his ring all the time.
- 6 Q Did you get any of the belongings back from Lee's
- 7 death?
- 8 A No. I was told that I wouldn't really want to see
- 9 them.
- 10 MR. ROBINSON: Uh -- I withdraw that.
- 11 Q Did anybody give you a ring?
- 12 A No, uh-uh.
- 13 Q The cell phone that he had, was that something he
- 14 always carried with him?
- 15 A Always, uh-huh.
- 16 Q And whose car was he actually in?
- 17 A Well, I bought the car for Lee. It was his car, it
- 18 was his car.
- 19 Q His car but you bought it for him.
- 20 A Uh-huh.
- 21 Q Do you know why he was on Sunnyglen that night?
- 22 A Well, my sister, Elizabeth Whiteside, lived right
- 23 there where this happened at. And his -- Lee's sister,
- 24 grandmother and them, they all be over next door across the
- 25 street.

Peggy Ann Davis
Direct examination by Mr. Bulsa

1 So where this happened at, the mark is still in the
2 roadway. My sister can't go outside of her house unless
3 she see the white cross, you know. That's where it
4 happened at.

5 Q So he was parked directly across the street.

6 A Right there, uh-huh.

7 Q Whose house is right there where he was parked?

8 A Now, on your left will be my sister's house, but on
9 the right would be his sister's grandmother's house.

10 Q Okay. Do you know some kid named Shad?

11 A Now, Shad, that was his sister's uncle.

12 Q Okay. But Shad would have lived at that house where
13 Lee was parked near?

14 A Yes, uh-uh.

15 Q Okay. All right. Now, that evening Lee was going to
16 go visit Ms. Whiteside.

17 A Well, he left. He called me on the phone. I was at
18 work. He always called me about time for me to get off
19 from work. And he said, mama, you bring me something to
20 eat home. I said no. I said that -- I was just walking
21 out the door. He said, well, I'll go out to Aunt Lib's and
22 get something to eat then. But he said I'll be here when
23 you get home. And I said okay.

24 Q So you didn't actually see him that evening.

25 A I didn't see him.

Peggy Ann Davis
Direct examination by Mr. Bulsa

1 Q When did you learn something had happened?

2 A I was on my way home from work, and I was coming down
3 that road. I heard a loud voice, but I didn't pay the loud
4 voice no attention, you know. Somebody was hollering at
5 me. But I didn't pay that no attention, you know.

6 I just went on out in the woods home. And then by the
7 time when I got home, the telephone rung. It rung so many
8 times I can't say.

9 Anyway, my sister, she called. And she say I be out
10 in a moment. She was crying and going on. She said on my
11 way out there. I say what, something done happened to Jim.
12 I thought something had happened to her husband. No, no,
13 no. I'm on my way. I said, no, I'm on my way. Said don't
14 come, don't come.

15 And so and then, and the phone rung again. It was
16 Channet calling me and asking me have I heard from Lee. I
17 said no. I said, now, just a few minutes ago he called me.

18 She says, well, something is going on wrong, something
19 is funny going on. And I said okay. And so, and then by
20 that time Randa, other granddaughter called me. Mama, you
21 at home. I said you called me at home, baby. She said,
22 well, she say okay then, I'll be up there. I say no.

23 At that time I got nervous because I heard all of the
24 sirens going off. And I didn't know what had happened. I
25 didn't know what was going on. And everybody calling and

Peggy Ann Davis
Direct examination by Mr. Bulsa

1 asking about Lee.

2 And then so when somebody called and asking about Lee,
3 I said, Lord, don't let nothing done happen to my baby, you
4 know.

5 And then everybody come running in the back door. And
6 so, and so I wanted to know what's wrong. And then they
7 said don't go out that door, don't go out there, don't go
8 out there.

9 So in some kind of way I got loose from them, and I
10 went anyway. And there was my baby laying down on the
11 ground up there. You know, and I just, it just was hard.
12 We haven't gave him up.

13 Q Okay.

14 A It was hard because he just have one day after
15 Thanksgiving. He was so happy because he had a son just
16 born. That was Lee's happiest day of his life looked like
17 because he had the whole family to come in. It was just
18 like, I don't know what, like a gift had come down, you
19 know.

20 And his daddy was on his way to fishing. And he
21 called his daddy all the way home because his baby was
22 born, being born. His daddy had to turn around and come
23 back home from Lake Hartwell, from fishing and all because
24 his baby was born.

25 He stayed at that hospital day and night until that

Leon Young
Direct examination by Mr. Bulsa

1 child got out of the hospital.

2 Q Thank you, Ms. Davis. Answer any questions Mr.

3 Robinson may have of you. Okay?

4 MR. ROBINSON: I have no questions, Your Honor.

5 THE COURT: All right. Thank you, ma'am. You may

6 step down.

7 MR. BULSA: The state calls Leon Young.

8 LEON YOUNG, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Mr. Young, would you introduce yourself to the jury
12 for us?

13 A My name is Leon Young.

14 Q Mr. Young, where do you live?

15 A I live on [REDACTED] Bailey Road in Greer.

16 Q Is that near Sunnyglen Drive?

17 A Yes, it is.

18 Q About how close is it?

19 A It is about a mile from Sunnyglen.

20 Q Do you walk that neighborhood often?

21 A Yes, I do.

22 Q About how old are you, sir?

23 A I'm 47 now. But at the time of the accident it was --
24 I was 45.

25 Q And where were you going?

Leon Young
Direct examination by Mr. Bulsa

1 A I was going over to see my friend at the Whitesides'
2 house -- Leroy.

3 Q All right. You were going to see Leroy Whiteside.

4 A Right.

5 Q Is he Elizabeth Whiteside's husband?

6 A He's Boyce Whiteside's son.

7 Q Okay. His son.

8 A Yes.

9 Q And do you recall about what time of the evening it
10 was?

11 A It was around about 8:30. It had got dark.

12 Q Okay. Were you walking by yourself?

13 A Yes, I was.

14 Q Now, where were you walking from?

15 A I was coming from -- well, I was walking from, you
16 know, from the apartments. But I was coming through by Amy
17 Gray crossing over Sunnyglen Drive.

18 Q Okay. Does Amy Gray go into Sunnyglen?

19 A Yes, it does. As a matter of fact, this incident
20 happened almost at the corner of Amy Gray and Sunnyglen.

21 MR. BULSA: Could I get this marked?

22 (Photograph marked State's Exhibit No. 6.)

23 MR. BULSA: Your Honor, for the record, State's
24 Exhibit No. 6 is offered without objection.

25 MR. ROBINSON: Without objection, Your Honor.

Leon Young
Direct examination by Mr. Bulsa

1 MR. BULSA: Photograph.

2 Q Mr. Young, let me approach you.

3 This is sort of an aerial photograph of that area.

4 A Uh-huh.

5 Q Do you recognize that area?

6 A Yes, I do.

7 Q It's got Amy Gray marked on it.

8 A Uh-huh.

9 Q Sunnyglen Drive.

10 A That's Amy Gray coming out there, and that's Sunnyglen
11 Drive going straight down.

12 Q Okay. So that shows the area where you were walking.

13 A Right.

14 Q As you walked down Amy Gray Street, what did you see,
15 if anything?

16 A Well, when I was crossing over Sunnyglen Drive I sort
17 of glanced to my, my right. And I seen a car with the
18 door, you know, open. But I thought it was just someone,
19 you know, discussing something, you know, or talking.

20 So I just continued right on. And right before I
21 stepped into the Whitesides' yard, that's when someone ran
22 behind my back and started shooting.

23 Q Okay. So you actually walked down Amy Gray Street and
24 crossed over Sunnyglen.

25 A Well, see, Sunnyglen comes down hill. Amy Gray comes

Leon Young
Direct examination by Mr. Bulsa

1 out.

2 Q Okay.

3 A So as I was crossing coming out from Amy Gray to cross
4 over Sunnyglen Drive, that's when I noticed it.

5 Q Did you recognize the car?

6 A Well, it was another car in the neighborhood like that
7 that another guy owns. So I wasn't familiar that that was
8 Lee's car at that time.

9 Q Okay. So when you saw the car, you weren't sure who
10 it was.

11 A Right.

12 Q And what about the car did you notice?

13 A That the door was open.

14 Q Which door?

15 A The driver's door.

16 Q Did you see anything else about it?

17 A No. It was just like someone was just in the doorway,
18 you know, like they was just talking and discussing
19 something.

20 Q Prior to getting to that location did you hear
21 anything?

22 A Well, as I was coming out the street, I might have
23 heard fireworks. But, see, at that time of the year, at
24 the end of the year, when people, you know, shooting
25 fireworks.

Leon Young
Direct examination by Mr. Bulsa

1 Q So you heard some loud noises that you thought might
2 have been fireworks.

3 A Fireworks.

4 Q Okay. And as you crossed the street and saw the car
5 with the door open, did anything happen with regards to
6 yourself?

7 A Yes. When I stepped into the yard, like I say,
8 someone ran behind me. And as I glanced over my shoulder,
9 all I seen was fire balls coming at me, fire balls.

10 Q Okay.

11 A So at first I thought it was somebody, you know,
12 playing with fireworks with me until my leg, you know, when
13 a shot kicked my leg out like. And then that's when I
14 ducked and ran to the door. And you got to understand that
15 the Whitesides had their porch light on, so everything
16 behind me seemed dark.

17 Q Okay. So you are telling us you didn't get a look at
18 who shot you.

19 A All I could see was just like a big jacket, like a
20 goose feather jacket. Someone ran in a big goose leather
21 jacket and maybe like had a white top on it, maybe a white
22 toboggan or something.

23 Q Okay. And how many shots were fired at you?

24 A Yell, I was hit twice. I don't know how many was
25 fired, because when, when I got hit in the arm, you know,

Leon Young
Direct examination by Mr. Bulsa

1 it just like went limp, and then my leg.

2 I was carrying something in my arms. And when I, when
3 I got hit in the arm, that caused me to drop it. Then my
4 leg, got hit in the leg, and it sort of went out from me.
5 And then that's when I just ducked down and ran to the
6 door.

7 Q So you were able to run away.

8 A Yeah, run on up to the porch and start beating on the
9 door.

10 Q Had you done anything to anybody?

11 A No.

12 Q Did you make any attempt to go towards that car that
13 was on the street?

14 A No, I didn't.

15 Q Did you hear anything being said?

16 A No, I didn't.

17 Q Where -- step down if you would, and continue to speak
18 loudly. And show us, show the jury, where you got struck.

19 (Whereupon, the witness left the stand.)

20 A Well, I got struck and everything from the back. It
21 basically went in my wrist right here and blew out in my
22 arm right here and blew out my wrist. And that came from
23 the back of me.

24 And then I got hit right here. And it blew out my leg
25 right here. So everything came from the back of me.

Leon Young
Direct examination by Mr. Bulsa

1 (Whereupon, the witness returned to the stand.)

2 Q So both bullets entered and exited you.

3 A Yes.

4 Q Now, you were able to get to the Whitesides.

5 A Yes. When I went to there and started beating on the
6 door, Ms. June opened the door. And then at that time I
7 went in and started rolling around on the floor coming out
8 of my clothes because those bullets was hot. And do you
9 want me to go on?

10 Q Yes, sir. What happened?

11 A They was going to call the paramedics, and then
12 Ms. Lib said take him, take him on, June. She was talking
13 to her husband.

14 So she gave me a couple of towels, and I wrapped my
15 arm up. And then we went out and got into the car.

16 As we was backing out of the driveway and just, just
17 barely got into the road and throwed the lights up, Ms. Lib
18 said that looked like Lee laying there.

19 So she got out of the car and went around there and
20 seen him. And she said, Lord have mercy, June, just take
21 Leon on, take Leon on, she, you know. So me and Mr. June
22 proceeded on to Allen Bennett Hospital. That's where he
23 let me out and then got back to Ms. Lib.

24 Q Did you come back that night?

25 A Yes. The detectives brought me back that night to

Leon Young
Cross-examination by Mr. Robinson

1 walk me through the part that I had done walked through.
2 That was around about 3:00 o'clock. And Lee's body was
3 still laying in the road.

4 Q Have you recuperated from your injuries?

5 A My arm is still messed up. But, no, I'll never get
6 over it, because every day I see, you know, I'm in
7 Sunnyglen a lot, because, as a matter of fact, I work for
8 Mr. Boyce Whiteside, you know, on the trash route. But
9 every time I see that, that cross, you know, it's a
10 constant reminder. And then I can, I can be asleep and
11 then it comes back on me.

12 Somebody can walk around my back, and it just spooks
13 me in some kind of way. I mean, no, I ain't got over it.
14 I probably never will. And it's just like it happened in
15 my back yard. You know, it just, it's just, it's just a
16 stamp on, you know, on my heart and my mind.

17 Q Thank you, Mr. Young. Answer any questions Mr.
18 Robinson may have.

19 MR. ROBINSON: May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. ROBINSON

22 Q Mr. Young, you had been drinking a little bit that
23 night, hadn't you?

24 A Yes, I had.

25 Q You had, I think, a King Cobra beer in your hand, is

Leon Young
Cross-examination by Mr. Robinson

1 that right?

2 A Yes, I did.

3 Q Is that a 32-ouncer?

4 A Yes.

5 Q Is that right?

6 Now, you're not, you're not telling this jury that you
7 ever seen, that you, that you saw David at the scene, are
8 you? You're not saying that, are you?

9 A No, uh-uh.

10 Q Okay. Because you, in fact, didn't see. You didn't
11 recognize anyone at the scene, did you?

12 A No.

13 Q Because now it was dark outside, correct?

14 A Right.

15 Q And I think you said that the Whitesides --

16 A Porch lights was on.

17 Q -- light was on. So everything behind you was dark,
18 is that right?

19 A Right. And then he was also throwing -- shooting.

20 And it just looked like streams of fire coming at me.

21 Q Okay. But you'd never seen David before in your life,
22 had you?

23 A No, I hadn't.

24 MR. ROBINSON: That's all I have of this witness.

25 Thank you.

Elizabeth Whiteside
Direct examination by Mr. Bulsa

1 MR. BULSA: Nothing further.

2 THE COURT: You may step down.

3 MR. BULSA: Elizabeth Whiteside.

4 ELIZABETH WHITESIDE, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Good afternoon, ma'am.

8 A Good afternoon.

9 Q Would you introduce yourself to us?

10 A My name is Elizabeth Whiteside.

11 Q And where do you live, ma'am?

12 A [REDACTED] Sunnyglen Drive, Greer, South Carolina.

13 Q How long have you lived there?

14 A About 32 years.

15 Q Are you related to Peggy Davis?

16 A I'm her sister.

17 Q That makes you Lee Evans' great-aunt?

18 A That's right.

19 Q Did Lee used to visit you a lot?

20 A A whole lot.

21 Q The night of his death were you expecting to see him?

22 A Well, he drops in on us frequently. He didn't have no
23 certain time to come, just come.

24 Q It's not unusual for him to just drop by.

25 A That's right.

Elizabeth Whiteside
Direct examination by Mr. Bulsa

1 Q All right. Now, do you recall something occurring
2 that evening?

3 A Yes.

4 Q Tell us the first thing you remember about that
5 evening.

6 A The first thing I remember about that evening is I was
7 watching television in my bedroom. I heard shots. Next
8 thing I know Leon was knocking on our door. He asked my
9 husband to take him to the hospital.

10 Q What was Leon's condition?

11 A Oh, Lord. I don't know. It scared me so bad until --
12 he was bleeding. And I tried to get him a towel or
13 something so to catch the blood.

14 Q Did y'all call 9-1-1?

15 A No. We put him in the car to take him to the
16 hospital. But as we were backing out of the drive and
17 started up the road, I recognized Lee's car. He was parked
18 across from my house. And then when we started out, I saw
19 Lee.

20 Q Where did you see Lee?

21 A I seen Lee. He was hanging out of the car on the
22 road. And I told my husband to stop, and he stopped. And
23 I jumped out. I said you take Leon on, I'm going to see
24 about Lee.

25 When I got over there, you could look at Lee and tell

Elizabeth Whiteside
Direct examination by Mr. Bulsa

1 he was dead. There wasn't no life.

2 Q Did you go up and touch him, ma'am?

3 A Yeah, I touched him. I called him. No sign, no
4 nothing.

5 Q What did you do at that point?

6 A Well, I run from the neighbor's across the street in
7 front of me because I couldn't get back in my house,
8 because my house key was on my car key ring. And my
9 husband had it.

10 And I didn't think about the cell phone at the time.
11 I had it down in my pocketbook.

12 So I run across the street. I couldn't make nobody
13 hear me.

14 So I come back, and I started rambling in that
15 pocketbook, and I found my cell phone.

16 By that time there was a guy coming down the road in
17 his car, and he stopped. And he said Ms. Lib, what's
18 wrong. And I told him. I said that's Lee.

19 And I finally got the cell phone, and I called 9-1-1.
20 And they kept trying to talk to me, and I was upset. I was
21 very upset. And finally they come.

22 Leroy and them come up in the yard. And I said,
23 honey, talk to these peoples and tell them how to get here,
24 help me get some help for Lee. So they took the phone and
25 talked to the peoples at the, on the 9-1-1.

Elizabeth Whiteside
Direct examination by Mr. Bulsa

1 Q Ma'am, let me ask you this. Who was the gentleman
2 that drove up?

3 A He was the Burnside.

4 Q Okay. Did he leave his car there until the police got
5 there?

6 A Yeah.

7 Q Okay. All right. Did he go towards Lee at all?

8 A Not at that time. He went next door to Louise and was
9 talking to them. He got them to come to the door.

10 Q Did you see anybody go to Lee's body before the E. M.
11 S. emergency workers got there?

12 A Not to my remembrance.

13 Q Okay. So you didn't see anybody going into --

14 A Yeah, I did. The girl across the street went up there
15 before the E. M. S. got there, because she picked him up.

16 Q Who was that?

17 A Nicole.

18 Q Nicole. Was she a friend?

19 A Yeah.

20 Q How was she acting?

21 A Oh, she was very upset. Everybody that came up at
22 that time that seen him and knowed it was upset.

23 Q Did you see anybody take anything off Lee?

24 A No, I didn't.

25 Q Anything off his hand?

Elizabeth Whiteside
Direct examination by Mr. Bulsa

- 1 A No.
- 2 Q Go through his pockets?
- 3 A No.
- 4 Q Take a shoe off?
- 5 A No. That was already off. That was off when I went
6 to the car.
- 7 Q It was. Okay. So other than you checking for Lee and
8 this lady holding him, nobody really touched with him.
- 9 A No.
- 10 Q Okay. What happened to Leon?
- 11 A He was shot. My husband took him on to the hospital.
- 12 Q On to the hospital, and you stayed. And you described
13 what happened.
- 14 A Uh-huh.
- 15 Q And the police arrived and spoke with you.
- 16 A Yes.
- 17 Q Okay. Did you tell Ms. Peggy what happened?
- 18 A Yes, I did. I was afraid somebody else was, so I went
19 on out to Peggy's. I saw them. I tried to stop them when
20 they come out of the road when she came from work, but my
21 brother was driving. He didn't stop. He went on to the
22 house. So I walked on out there.
- 23 Q Ma'am, let me ask you a couple of questions about your
24 neighbor across the street. Who lived there?
- 25 A Louise Ballenger.

Elizabeth Whiteside
Cross-examination by Mr. Robinson

1 Q Was there a person by the name of Shad that lived
2 there?

3 A No.

4 Q Do you know who Shad is?

5 A Yes. I know Shad.

6 Q Does he live in the neighborhood?

7 A No, not now. He used to. Louise is his mother.

8 Q Okay.

9 A And he visits there a lot, but he moved out.

10 Q Okay. So he used to live there.

11 A Yeah.

12 Q And visited there.

13 Okay. Thank you, Ms. Whiteside. Answer any questions
14 that Mr. Robinson may have for you.

15 MR. ROBINSON: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON

18 Q Ma'am, in terms of Lewis, Lois Ballenger, I think you
19 talked about, you don't keep an eye on her. You weren't
20 keeping an eye on her house every day to see if Shad was
21 coming in or out, were you?

22 A No.

23 Q So whether he was there or not, you really don't know,
24 do you?

25 A What? That particular night?

Elizabeth Whiteside
Cross-examination by Mr. Robinson

1 Q Yes.

2 A Not to my knowledge.

3 Q Now, when you actually got on the scene -- and I'm
4 sorry about your loss -- did you get there immediately
5 after it happened, or was it a short time after it
6 happened? Do you know?

7 A I think it was a short time after it happened, because
8 I heard the shot. And by the time we heard the shots good
9 Leon was knocking on the door.

10 Q Yes, ma'am. Okay. And you mentioned a few moments
11 ago on direct examination from the solicitor's office
12 regarding Nicole being there. Do you remember you just
13 said that a few minutes ago?

14 A She came across afterwards, after Robert got them to
15 come to the door.

16 Q Okay, okay. But she -- so she didn't come before you,
17 is that right?

18 A Not to my knowledge, no. Wasn't nobody there.

19 Q Okay. All right. Were you watching? Were you
20 watching who was there the whole time as far as who was
21 going out to the car or watching the scene the whole time?

22 A Well, see, when we come out there wasn't a sole out
23 there. There wasn't nobody there when I got out there but
24 Lee. I didn't see another soul till Robert Bradshaw came
25 down the road in his car.

Elizabeth Whiteside
Redirect examination by Mr. Bulsa

1 Q And you saw no one else at the scene besides who you
2 just spoke about, correct?

3 A At that time, no.

4 Q And you hadn't seen anyone else earlier that evening
5 as well, had you?

6 A No, because I wasn't on the front.

7 Q Thank you.

8 MR. BULSA: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BULSA

11 Q Ms. Whiteside, did you stay with Lee's body until the
12 police got there?

13 A Well, yeah, because of Nicole and Louise, you know,
14 they started coming out of the houses and everything.
15 Yeah. I was there until I went out to Peggy's.

16 Q Okay. And did the ambulance get there?

17 A Yes.

18 Q Okay. And they checked for Lee and found out he was
19 deceased?

20 A Yes.

21 Q And then the police began an investigation?

22 A Yeah. They started roping everything off.

23 Q Thank you, ma'am.

24 MR. ROBINSON: No recross, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 MR. BULSA: May we approach?

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 THE COURT: All right. Ladies and gentlemen, we are
5 going to recess for the afternoon.

6 Please keep in mind the caution I gave you before you
7 were excused for lunch. You can't talk about the case with
8 anybody.

9 When you go home, I'm sure you've got a spouse or a
10 child or a friend or somebody wants to know what you're
11 doing if they know you have jury duty. But you tell them
12 you can't talk about it.

13 Now, after this case is over, that is after you've
14 reached a decision, you can talk about it as much as you'd
15 like to as many or as few as you would like. But until the
16 time comes that you have reached a verdict, you can't
17 discuss the case except during deliberations. So don't
18 talk about the case during the overnight recess.

19 Also, as I told you, you can't conduct any research or
20 do your own investigation into any issue. If one should
21 arise during the trial you have a question about, you can't
22 supplement the evidence by doing any outside research. So
23 don't do that.

24 Also, I don't know that there'll be anything on
25 television or in the newspaper or on the radio about the

1 case. But you've got to avoid any type of media coverage
2 of the trial.

3 So if something should come on, turn it off, turn it
4 down. If there's an article in the paper, don't read it.
5 You can save it for later, but don't read it now during the
6 trial.

7 Okay. With that do have a good evening. Please
8 report back to your jury room at 9:30 in the morning,
9 9:30 in the morning. Have a good evening.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: All right. Any matters to address before
13 we conclude or recess?

14 MR. BULSA: No, sir.

15 MR. ROBINSON: Nothing from the defense, Your Honor.

16 THE COURT: All right. Court is in recess until
17 9:30 in the morning.

18 END OF PROCEEDINGS JANUARY 8, 2007

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1 (Proceedings January 9, 2007)

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

4 (State's Exhibit No. 5 for Identification marked
5 Defendant's Exhibit No. 1 for Identification; Letters marked
6 Defendant's Exhibits Nos. 2 through 15.)

7 THE COURT: All right. Any matters to address before
8 the jury is brought in?

9 MR. BULSA: No, sir.

10 MR. ROBINSON: None from the defense, Your Honor.

11 THE COURT: Okay. Bring them in.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good morning, ladies and gentlemen.

15 As you know, when we recessed yesterday the state was
16 in the midst of their presentation of evidence. So we're
17 going to continue with that presentation this morning.

18 I know that one or more of you had asked about the
19 possibility of taking notes during the course of the trial.
20 And you have been provided note pads for that purpose.

21 Understand that just because you've been provided a
22 pad doesn't mean that you have to take notes. Some people
23 feel like it's important or necessary or beneficial to take
24 notes during the course of a trial.

25 Others feel like it's more important to pay attention

Boyce Whiteside
Direct examination by Mr. Bulsa

1 to the witness as they testify, because oftentimes you can
2 tell as much about the credibility and the believability of
3 a witness' testimony by observing them as you can by what
4 they actually have to say.

5 So if you feel like it's beneficial to you to take
6 notes, then feel free to do so. But understand that the
7 notes that you take are for the benefit of the note-taker
8 only. That is no other juror is to rely upon some other
9 jurors' note-taking as being their recollection or
10 understanding of what the evidence is.

11 If when the time comes for deliberations and you get
12 back there and in your discussions you have some question
13 or issue about what a witness testified to, we can always
14 bring you back to have that testimony replayed in whole or
15 in part.

16 So if that'll help you resolve a question, that can be
17 accomplished in that fashion. But, as I say, the notes
18 that you take individually are for your individual use.
19 And they're not to be relied upon by any other juror as to,
20 as being what was testified to or evidence introduced
21 during the trial.

22 Okay. All right. We'll continue with the state's
23 presentation of evidence.

24 MR. BULSA: The state calls Boyce Whiteside.
25

Boyce Whiteside
Direct examination by Mr. Bulsa

1 BOYCE WHITESIDE, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. BULSA
4 Q Good morning, Mr. Whiteside.
5 A Good morning.
6 Q Introduce yourself to the jury.
7 A Boyce Whiteside.
8 Q Where do you live, sir?
9 A I live in Sunnyglen, [REDACTED], in Greer.
10 Q And you're the husband of Elizabeth Whiteside?
11 A I am.
12 Q How long have y'all been married?
13 A Forty years.
14 Q Okay. Lee Evans was your --
15 A Nephew.
16 Q -- great nephew.
17 A Yeah.
18 Q Okay. Did you see him the night of his death?
19 A I saw him after he was dead, after his death. I
20 didn't see him before.
21 Q So he never made it to your house to visit with you.
22 A No. He was out in his car in front of the house.
23 Q Was it common for him to come and visit you and your
24 wife?
25 A Yeah.

Boyce Whiteside
Direct examination by Mr. Bulsa

1 Q Now, tell us. Do you remember hearing any sounds
2 outside?

3 A Yeah. I was laying on the couch about 8:00 o'clock,
4 and I heard two shots. Sounded like somebody was shooting
5 at a bear. And I raised up and I heard two more shots.

6 By that time Leon came to the door and said he was
7 shot. I let him in. My wife got a towel and wrapped him
8 up.

9 We got in the car and started up the road. And as my
10 lights on the car shined over on Lee's side, he was laying
11 in the road, one foot up in the car and one on the ground.

12 I told my wife, I said, Lord, that's Lee been shot.
13 That's what was going on out there.

14 I takes Leon, and she gets out. And I take Leon to
15 the emergency room. I'm coming back, and that was it.

16 Q Mr. Whiteside, I've got some photographs I'd like to
17 go over with you in just a minute.

18 MR. ROBINSON: That's without objection, Your Honor.

19 THE COURT: What numbers are those?

20 MR. BULSA: For the record, Your Honor, States No. 6
21 has already been discussed. State's Nos. 8 and 9, 16 and
22 17, 10, 11 and 12.

23 THE COURT: They're admitted without objection.

24 (Photographs marked State's Exhibits Nos. 8, 9, 10, 11,
25 12, 16 and 17.)

Boyce Whiteside
Direct examination by Mr. Bulsa

1 Q Mr. Whiteside, let me start.

2 THE COURT: Let me ask y'all to move that rope and let
3 the jury move down. That will help you to see a little bit
4 better perhaps, or at least some of you.

5 Q Mr. Whiteside, you need to continue to speak up as you
6 testify.

7 A Okay.

8 Q Okay. I'm going to be projecting these pictures up on
9 this screen. I've got a laser here I'll use to point for
10 you.

11 THE COURT: Why don't you just have him come and stand
12 by you, because he's got his back to the court reporter.
13 She can't see him.

14 (Whereupon, the witness left the stand.)

15 THE COURT: Mr. Whiteside, just be sure that when
16 you're over there with Mr. Bulsa, you're away from the
17 microphone. So speak up loudly so all can hear.

18 Q Start with State's No. 6. This is the one that, I
19 believe, Leon talked about yesterday. You live on
20 Sunnyglen Drive.

21 A That's right.

22 Q Let me get you to -- see that? Would this be your
23 house on Sunnyglen?

24 A Yeah, yeah, yeah; that's my house.

25 Q Okay. Amy Gray runs into Sunnyglen, is that right?

Boyce Whiteside
Direct examination by Mr. Bulsa

1 A That's right.

2 Q Can you point? Where would Lee's car have been
3 approximately?

4 A Right there.

5 Q Right there. And whose house is right there where he
6 was parked at?

7 A Right here?

8 Q Yes, sir.

9 A That's where Shad lived.

10 Q Okay. I show you now State's Exhibit No. 8. This is
11 on another day. Do you see your house off in the distance?

12 A No. That wouldn't be, that wouldn't be my house.

13 Q How about this one over here right in there?

14 A No. My house would be on this side of the road.

15 Q Okay. All right. Let me show you State's Exhibit No.
16 9. Is that your house?

17 A That's my house.

18 Q Okay. Just use that one then. And can you point
19 approximately to where the car would have been?

20 A The car would have been right there.

21 Q Right in there.

22 Okay. Do you run a trash service?

23 A Yeah.

24 Q Okay. And what kind of truck do you use for your
25 trash service?

Boyce Whiteside
Direct examination by Mr. Bulsa

- 1 A I use a dump truck and a pickup truck.
- 2 Q Let me show you State's Exhibit No. 16. Is that a
- 3 picture of the truck you use?
- 4 A That's the truck.
- 5 Q Okay. Is where that's parked right now or in that
- 6 picture, is that where it was?
- 7 A That's where it was the night of the shooting.
- 8 Q The night of the shooting.
- 9 Now, did the police come out the next day and take
- 10 anything out of that truck?
- 11 A Yes, sir. And the officers came out. He came out and
- 12 then he went to the truck and examined it and looked right
- 13 there. That's where they dug the bullet got out of the
- 14 truck, right there.
- 15 Q Put State's No. 17 right up underneath it. That's a
- 16 closeup picture of the bullet?
- 17 A That's the bullet.
- 18 Q Okay. And it was right near where that -- you see the
- 19 horizontal, the wood piece right there?
- 20 A Right there beside the wood piece.
- 21 Q Okay. All right. Let me go back to State's Exhibit
- 22 No. 9. So that truck would have been parked.
- 23 A Right there.
- 24 Q Right there.
- 25 Okay. All right. Let me go to a few pictures that

Boyce Whiteside
Direct examination by Mr. Bulsa

- 1 were taken the night of the incident. State's Exhibit No.
2 10. That street sign, you can't tell, but is that the
3 street sign for Amy Gray?
4 A That's Amy Gray Street right there.
5 Q Okay. And the house we see up here to the right.
6 A That's where Shad's mother lives. He don't stay
7 there.
8 Q Okay. Now, that's where the car would have been
9 parked.
10 A That's where the car was parked, right here.
11 Q And the object covered with the sheet?
12 A That's Lee.
13 Q All right. State's Exhibit No. 11.
14 A That's Lee's car.
15 Q That's a different view.
16 A Uh-huh.
17 Q Is that your house we see in the background?
18 A That's my house with the light in it.
19 Q Okay. And we see sort of an object right in front of
20 the porch.
21 A The porch?
22 Q Let me point it to you. Right in here. Is that about
23 where your truck would have been?
24 A Yeah, right in there.
25 Q Okay. I have one other picture I want to show you,

Boyce Whiteside
Direct examination by Mr. Bulsa

1 State's Exhibit No. 12. Other than the shoe being there,
2 is that about where you saw Lee?

3 A Yeah. That's where I saw Lee after I came from the
4 emergency room.

5 Q Okay.

6 A Before I went to the emergency room he had a foot in
7 the door.

8 Q Okay, okay. All right. You can go back and have a
9 seat now up here.

10 (Whereupon, the witness returned to the stand.)

11 A Sorry.

12 Q So you actually left Leon at the hospital.

13 A Yes, sir.

14 Q And your wife had actually stayed at the --

15 A She stayed home with Lee.

16 Q Okay. And you testified when you got back Lee was
17 covered with that sheet.

18 A No. He wasn't covered with the sheet then.

19 Q He wasn't covered yet?

20 A No. When I got back Lee wasn't covered. He wasn't
21 covered until the officers came.

22 Q Okay. And then the police started looking around.

23 A Sir?

24 Q The police started looking around.

25 A Yeah, yeah. They started an investigation.

James Anthony Smith
Direct examination by Mr. Bulsa

1 Q Okay. Did they speak to you that night?

2 A Yeah, they spoke to me that night and asked me did I
3 see anything. But I didn't see anything. I heard. So
4 that's all I could tell them.

5 Q Thank you. Answer any questions Mr. Robinson may
6 have.

7 MR. ROBINSON: I have no questions of this witness,
8 Your Honor.

9 THE COURT: Thank you, sir. You may step down.

10 MR. BULSA: I believe Mr. Whiteside would like to go
11 to work, Your Honor. We would ask that he be excused.

12 THE COURT: He may be excused.

13 (Whereupon, the witness was excused.)

14 MR. BULSA: Is Detective Smith outside?

15 JAMES ANTHONY SMITH, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Good morning, deputy. Would you please introduce
19 yourself to the jury?

20 A My name is James Anthony Smith of the Spartanburg
21 County Sheriff's Office.

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

23 A Seven years.

24 Q And what are your duties now?

25 A Actually I'm assigned to court, courtroom security

James Anthony Smith
Direct examination by Mr. Bulsa

1 here.

2 Q Back on December the 30th of 2004 what were your
3 duties?

4 A I was actually assigned to uniform patrol answering
5 9-1-1 calls, and pretty much 9-1-1 calls ranges to anything
6 imaginable, and also enforcing the laws of this state.

7 Q Did you get a call to go to the Sunnyglen area near
8 Greer on December the 30th?

9 A Yes.

10 Q And where did you respond?

11 A Actually I responded to the roadway of Sunnyglen Drive
12 and Amy Gray Street.

13 Q And is that area in the jurisdiction of Spartanburg
14 County?

15 A Yes, it is.

16 Q Specifically, State's Exhibit No. 6, is that the area
17 where you responded?

18 A Just from looking at the markings of Amy Gray, yeah,
19 and Sunnyglen, yes.

20 Q Okay. When you arrived there, what did you find?

21 A Actually, I seen -- actually when I got there, I
22 actually seen a young black male being nonresponsive to the
23 paramedic, the medic personnel, laying in the roadway off
24 Sunnyglen Drive close to Amy Gray.

25 Q Were you the first officer?

James Anthony Smith
Direct examination by Mr. Bulsa

1 A Yes.

2 Q And the paramedics had made it there first?

3 A They had made it there first.

4 Q And where were they treating him? Where was he when
5 they were treating him?

6 A He was pretty -- he was laying out on the roadway next
7 to a vehicle.

8 Q What condition was the vehicle in?

9 A Actually, after I actually got out and started
10 examining the car, the vehicle, the driver's-side door was
11 open and the passenger-side door was open. And on the
12 driver's-side door it actually had like a glass was broken.

13 Q Okay. Did you begin to speak to people in the area?

14 A I actually began to speak to people in the area after
15 I established a perimeter around the place to secure the
16 scene.

17 Q And describe that for the jury. What do you mean by
18 it?

19 A Actually, securing the scene and setting up a
20 perimeter is actually putting like crime-scene tape up.
21 Setting up a perimeter is like boundaries to keep people
22 from actually coming into a certain area that you're trying
23 to protect.

24 Q Were people trying to come into the area?

25 A Oh, yes, they were.

James Anthony Smith
Direct examination by Mr. Bulsa

1 Q Do you know why they were coming in?

2 A I'm pretty sure a lot of them was upset and being
3 emotional. There was a lot of people there to see, that
4 they knew the victim, Mr. Evans.

5 Q And you were trying to keep them separated --

6 A Yes.

7 Q -- so y'all could investigate the case.

8 A Yes, sir.

9 Q Did you yourself ever touch Mr. Evans' body?

10 A No.

11 Q After you established that perimeter, what did you do,
12 begin to do?

13 A After I established the perimeter actually I spoke
14 with a guy, Mr. Rodney Burnside, who was there on the
15 scene. His car was parked in front of the vehicle which
16 Mr. Evans was laying out next to.

17 Q Let me show you State's Exhibit No. 11. The main
18 vehicle in the picture, is that Mr. Evans' car?

19 A Yes. It's a Geo Prizm.

20 Q And then there's a vehicle to the right of it as we're
21 looking at it. Would that have been Mr. Burnside's car?

22 A I believe so.

23 Q Okay. All right. And then what did you do after
24 speaking with him?

25 A Actually, I just -- which actually, I just asked him,

James Anthony Smith
Direct examination by Mr. Bulsa

1 you know, what did he see, you know, see anyone around.

2 And he just told me that he actually was just traveling on
3 that roadway and he just came up on the vehicle and he got
4 out to see what was going on.

5 Q And did you see Ms. Elizabeth Whiteside?

6 A Excuse me?

7 Q Elizabeth Whiteside?

8 A No.

9 Q You didn't speak with her?

10 A No.

11 Q Did investigators arrive?

12 A Yes, after I established the perimeter. And I
13 actually asked for other, for assistance from a supervisor
14 also.

15 Q And what happened when the investigators arrived?

16 A I believe when they arrived they started interviewing
17 other people, you know, that was actually standing around
18 the area itself.

19 Q Did you continue to investigate yourself?

20 A I spoke with one other person. I think it was Kelly
21 La Channet who stated that she was --

22 MR. ROBINSON: I'm going to object, Your Honor.
23 Hearsay.

24 THE COURT: Sustained.

25 Q You spoke to the young lady name Kelly?

James Anthony Smith
Direct examination by Mr. Bulsa

1 A Yes, Kelly La Channet.

2 Q Okay. Could you have the names backwards? Could
3 Kelly be her last name?

4 A Yes.

5 Q What was her emotional state?

6 A She was upset.

7 Q Okay. Specifically, did you note anything about
8 Mr. Evans' body, his clothing?

9 A In the report I wrote that he actually -- well, which
10 I actually also observed. He had one shoe off. It was a
11 brown shoe. I believe it was a Timberland shoe that was
12 laying next to him also.

13 Q What about anything, about his pockets?

14 A Nothing that I recall.

15 Q Okay. You don't recall if they were outturned or not?

16 A No.

17 Q Do you recall which investigators you turned the scene
18 over to?

19 A Can I refer back to my notes?

20 Q Sure.

21 A Detective Wood and also Detective Wilde.

22 Q Okay. Thank you, officer. That's all I have. Answer
23 any questions Mr. Robinson may have.

24 MR. ROBINSON: May it please the Court.

25 CROSS-EXAMINATION

James Anthony Smith
Cross-examination by Mr. Robinson

1 BY MR. ROBINSON

2 Q Officer, you would agree that this is, this is a,
3 there's a lot of drug activity in this area. Would you
4 agree with that?

5 MR. BULSA: Objection, Your Honor, as to relevance.

6 THE COURT: Well, let me see y'all just a minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: You may answer the question if you know.

10 A I would say no because I don't normally work that
11 area. At that time of the year I wasn't normally working
12 that area.

13 Q Okay. So you don't know because you don't work in
14 that area, correct?

15 A No. That was not one of my normal assigned areas that
16 I worked in.

17 Q Okay. Now, a few moments ago on direct examination
18 you stated that there were other people in the area,
19 correct?

20 A Yes, sir.

21 Q Standing around, is that right?

22 A They came after the perimeter, actually when a
23 perimeter was set up.

24 Q Okay. And would you estimate more than five people
25 were out there?

James Anthony Smith
Cross-examination by Mr. Robinson

- 1 A Taking an estimated guess, probably more than 50.
- 2 Q More than 50 people out there?
- 3 A Yes.
- 4 Q Okay. And this is before you set the perimeter up?
- 5 A It's about the time I was putting a perimeter up.
- 6 Q So they were there at the same time you were putting
- 7 the perimeter up, correct?
- 8 A Yes.
- 9 Q Okay. And you don't have any idea how long people had
- 10 been milling around out there before you put the perimeter
- 11 up, correct?
- 12 A I'm not understanding your question. I don't know.
- 13 Q The 50 people that you said were out there by the time
- 14 you were doing the perimeter, you don't know how long they
- 15 had been there, isn't that correct?
- 16 A They wasn't there before I got there.
- 17 Q So they all came out when you got there?
- 18 A They started showing up like one by one, or twos. I
- 19 wasn't keeping count that way.
- 20 Q The integrity of the crime scene before you put your
- 21 perimeter up on the crime scene, how long was it before?
- 22 What time did you get out there?
- 23 A I was dispatched about 9:14, and I got there probably
- 24 four minutes after that. It's like 9:18.
- 25 Q Okay. Isn't it true that other people could have been

James Anthony Smith
Redirect examination by Mr. Bulsa

1 out at the crime scene before you put up your, your
2 perimeter?

3 A It's a possibility.

4 Q But you don't know how many people were out there
5 prior to you putting up your crime scene.

6 A Prior to me putting up my crime scene was only the
7 medics out there. And the other guy who I met,
8 Mr. Burnside, was standing to the side.

9 Q Okay. So Mr. Burnside was out there, correct?

10 A Yes.

11 Q Okay. But you don't know -- but to your knowledge you
12 don't know how many other people were out there as well,
13 correct?

14 A To my knowledge that's the only people that was there
15 once I got there. If someone passed by, I don't know,
16 prior to me getting there.

17 Q Thank you very much.

18 REDIRECT EXAMINATION

19 BY MR. BULSA

20 Q Just briefly in reply just so the jury understands.
21 So these 50 or so people that were there didn't come until
22 after you'd arrived.

23 A Yes.

24 Q Okay. Thank you.

25 MR. BULSA: That's all I have.

Matt Wilde
Direct examination by Mr. Bulsa

1 THE COURT: You may step down.

2 MR. BULSA: Matt Wilde.

3 Your Honor, we would ask Officer Smith be excused.

4 THE COURT: He may be.

5 MR. ROBINSON: I have no objection.

6 (Whereupon, the witness was excused.)

7 MATT WILDE, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BULSA

10 Q Good morning, officer. Please introduce yourself to
11 the jury.

12 A I'm Investigator Matt Wilde with the Spartanburg
13 County Sheriff's Office.

14 Q And how long have you been an investigator?

15 A I've been an investigator about probably three and a
16 half years.

17 Q How long have you been an officer?

18 A Six years.

19 Q What were your title -- what were your duties back on
20 December the 30th of 2004?

21 A At that time I was assigned to the property crimes
22 unit of the sheriff's office. I was a second shift
23 investigator at that time. We worked from 3:00 p.m. until
24 midnight.

25 Q All right. During that shift did you get a call to go

Matt Wilde
Direct examination by Mr. Bulsa

1 to the Sunnyglen area in Greer?

2 A Yes, I did.

3 Q And what was the nature of that call?

4 A It was a, it was a shooting call. While I was on --
5 when we were notified of the call we were told that there
6 was a wanted person.

7 MR. ROBINSON: Objection. Hearsay, Your Honor.

8 THE COURT: Sustained.

9 THE WITNESS: Okay.

10 Q A shooting call?

11 A It was a shooting call.

12 Q And do you recall approximately when you arrived?

13 A Can I refer to my notes?

14 Q Yes, sir.

15 A I guess I arrived at about 9:40 p.m.

16 Q Okay. So what was taking place when you arrived?

17 A When I arrived there were, there were many, many
18 people out in the street.

19 Deputy Smith had already set up a crime scene and
20 roped an area off. There was, there was a car parked, and
21 there was a gentleman laying in the street who was
22 deceased.

23 Q Were the paramedics still there?

24 A I believe they were.

25 Q What did you do when you arrived?

Matt Wilde
Direct examination by Mr. Bulsa

1 A When I arrived I spoke with Deputy Smith. There was a
2 fire truck, police cars there.

3 I spoke with Elizabeth and Boyce Whiteside. I took a
4 statement from them about what they had seen.

5 I also spoke with Rodney Burnside and took a statement
6 from him, and Lee Whiteside and Mack Murphy.

7 Q Okay. To what extent were you to investigate this
8 case?

9 A Just, basically just, a preliminary, just to, just to
10 get out there and just see what was going on and notify the
11 homicide investigators who were on their way, you know,
12 just what the status was at the scene.

13 Q You arrived before the homicide investigators?

14 A Yes, I did.

15 Q Did you assist them in the investigation?

16 A Well, I took some written statements from some of the
17 witnesses who had heard some gunfire and seen some vehicles
18 in the area that day.

19 Q Okay. So do you recall which officer you turned it
20 over to?

21 A I turned it over to David Taylor, and, yeah, David
22 Taylor.

23 Q Was Detective Wood out there also?

24 A I believe he was.

25 Q Do you remember anything specific about the condition

Matt Wilde
Direct examination by Mr. Bulsa

1 of Mr. Evans?

2 A I remember that his car was parked, and I believe his
3 driver's-side door was open, and that he was laying. Let
4 me see if I have it in my notes here. He was laying flat
5 on his back with his hands to his sides.

6 When I got there they had covered, somebody had
7 covered, him in a white sheet. I didn't really get up
8 close at that point and see where his wounds were or
9 anything.

10 Q Did you learn of a second victim?

11 A Yes. I learned that the second guy had been taken to
12 the hospital. Let me see if I can find his name in here.
13 Yeah. It was a gentleman named Leon, is what I have in my
14 report.

15 Q Okay. All right. Thank you, officer. Answer any
16 questions Mr. Robinson may have.

17 A Thank you.

18 MR. ROBINSON: I have no questions, please.

19 THE COURT: You may step down.

20 THE WITNESS: Thanks.

21 MR. BULSA: We would ask he be excused.

22 THE COURT: He may be.

23 (Whereupon, the witness was excused.)

24 MR. BULSA: The state calls Randy Bogan.

25 RANDALL EUGENE BOGAN, having

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 been first duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. BULSA

3 Q Officer, please introduce yourself to the jury.

4 A I'm Randall Eugene Bogan with the Spartanburg County
5 Sheriff's Department, and I work in the forensics division.

6 Q And how long have you been in that division?

7 A Approximately seven years.

8 Q Did you get a call to go to Sunnyglen Drive on
9 December the 30th of 2004?

10 A Yes, sir, I did.

11 Q Do you recall approximately when you arrived?

12 A It was later in the night. I'm not sure exactly what
13 time, but it was later in the night.

14 Q What was your purpose for going there?

15 A I was called in reference to a shooting that occurred.
16 And upon my arrival I found a, saw a, black male laying in
17 the roadway beside a vehicle.

18 Q Okay. And is it your job to collect the evidence?

19 A Yes, sir, it is.

20 Q And what did you begin doing when you arrived?

21 A When I arrived we began taking photographs. We
22 usually do digital photographs; also, video-taped the
23 scene; and then look over the scene as well as we can
24 without disturbing any of the evidence; and then we start
25 collecting evidence.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Before we start collecting we also place placards on
2 each piece of the evidence that we locate, and then we
3 start collecting it. We rephotograph it again with a
4 placard of course, and then we start collecting.

5 Q Now, when you go to a scene are there specific things
6 you're looking for?

7 A Yes, sir. On a shooting scene, of course we look for
8 projectiles. We look for casings that could have come from
9 the gun, any type of blood that would be anywhere located
10 in the vehicles that are on the scene, just any type of
11 evidence that would be beneficial to the shooting of
12 course.

13 Q Do you always know what you're looking for?

14 A Excuse me?

15 Q Do you always know what you're looking for?

16 A Yes, sir. Well, I say we do but when a -- each scene
17 is different. Basics, we know what we're looking for. But
18 sometimes we find other things that are irrelevant to the
19 case. And that way, of course we don't collect those.

20 Q Now, did you prepare a diagram of what you collected?

21 A Yes, sir, I did.

22 MR. BULSA: Let me get this marked.

23 MR. ROBINSON: That's without objection, Your Honor.

24 MR. BULSA: State's No. 22.

25 (Diagram marked State's Exhibit No. 22.)

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Q Before I show that let me show a couple of pictures.

2 State's Exhibit No. 12, is that the positioning of the car
3 and the body, how you found it?

4 A Yes, sir, it is.

5 Q Was it already covered up?

6 A Yes, sir, it was.

7 Q Okay. And the -- was the door opened?

8 A Yes, sir. It's exactly the way it was when I arrived
9 on the scene.

10 Q So the driver's door was open, as well as the
11 passenger's door.

12 A That's correct.

13 Q I show you State's Exhibit No. 13. Do you recognize
14 that picture?

15 A Yes, sir, I do.

16 Q Is that an accurate depiction of what's denoted in
17 that picture?

18 A Yes, sir, it is.

19 Q State's No. 14.

20 A I also recognize it, and it is accurate too.

21 Q Okay.

22 MR. BULSA: Your Honor, I would move State's 13 and 14
23 into evidence.

24 MR. ROBINSON: That's without objection, Your Honor.

25 THE COURT: They're admitted.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibits Nos. 13 and 14.)

2 Q Let me show you a series of pictures now. State's 18,
3 19, 20 and 21. Do you recognize those photos?

4 A Yes, sir, I do.

5 Q And what do they denote or show?

6 A They are photographs of the inside of the vehicle.

7 When a bullet is discharged from a weapon it creates a
8 path through seats or whatever it may go through in a
9 vehicle. Through a car door, through anything. And this
10 denotes the path that the bullet took.

11 Q And how can you be sure that that was the path that it
12 took?

13 A We place a rod. If it goes through a seat we'll place
14 a rod through the seat. And it will point the direction
15 that the bullet traveled through the seat and show us where
16 it actually struck, and then we can locate where it struck.

17 If it went through something else, we can also take
18 that, continue it through, the rod through, the hole and
19 find out where else it struck. And that's the best way
20 that we can find where a projectile is or the discharged
21 bullet.

22 MR. BULSA: Your Honor, I would offer these exhibits
23 into evidence State's 18, 19, 20 and 21.

24 MR. ROBINSON: That's without objection, Your Honor.

25 THE COURT: They are admitted.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibits Nos. 18, 19, 20
2 and 21.)

3 Q We have shown the two pictures of the vehicle. Let me
4 show you now State's Exhibit No. 13. Is that a picture of
5 the driver's door?

6 A Yes, sir, it is, and the driver's window where it is
7 busted out.

8 Q Okay. And inside the driver's door, is this a
9 picture, State's Exhibit 14, of the driver's seat?

10 A Yes, sir, it is.

11 Q Do you see anything in particular in that seat?

12 A Yes, sir. If you look closely, in the corner where
13 the gray meets the light gray, that is a projectile or a
14 discharge bullet that went through the window.

15 If you saw the window, there was one shattered piece
16 and then there was another small hole through the window.
17 And there was two bullets that went through the window.
18 And there is one of the bullets in the seat there.

19 Q That's a bullet or a casing?

20 A It is a, that, well, actually that could be a casing.
21 I'd have to look at my --

22 Q Let's look at the diagram that you drew.

23 A I believe it is.

24 Q State's Exhibit 22.

25 A Yes, sir, please. That would be marked.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Q Do we have a...

2 (List marked State's Exhibit No. 23 for

3 Identification.)

4 Q Show you State's Exhibit No. 23 for Identification.

5 Is that a portion of your report?

6 A Yes, sir, it is.

7 Q Does it show the items that you put into your diagram?

8 A Yes, sir, it does.

9 Q Is that a listing?

10 A Yes, sir, it is.

11 Q We can't really see the numbers that closely. We will
12 have to zoom in, but each number up there, will that be
13 noted on that report?

14 A Yes.

15 MR. BULSA: Your Honor, I would offer this into
16 evidence to supplement the diagram.

17 MR. ROBINSON: Your Honor, I have something I would
18 like to take up outside the presence of the jury.

19 THE COURT: All right. Let me see y'all just a
20 minute.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: All right. Ladies and gentlemen, I have
24 got one matter I'll need to address outside of your
25 presence.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 So I'm going to ask you to please go to your jury
2 room. Do not discuss the case in any fashion. I'll bring
3 you back in just a few minutes.

4 (The following takes place outside the presence of the
5 jury.)

6 Q Officer, let me show you this document marked State's
7 23. Is that the proper form?

8 A Yes, sir.

9 MR. ROBINSON: No objection, Your Honor, to that one.

10 MR. BULSA: And this is a listing of the evidence at
11 the scene setting out by number identifying what he found,
12 State's 23.

13 THE COURT: All right. It's admitted without
14 objection.

15 (List marked State's Exhibit No. 23.)

16 MR. BULSA: There is one matter we can address while
17 the jury is out, Your Honor, is a photograph, State's
18 Exhibit No. 15.

19 Q I will get you to look at that, officer.

20 A Yes, sir.

21 Q What is that depicting?

22 A This is a photograph of the jacket that was actually
23 across the roadway from the vehicle and the victim that was
24 laying on the side of the road. And we located a casing
25 under this jacket.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Q Okay. Is that where it was believed that Mr. Leon
2 Young was?

3 A Yes, sir.

4 Q And does it show the victim in the background?

5 A Yes, sir, it does.

6 Q Is that an accurate depiction --

7 A Yes, sir, it is.

8 Q -- of those items?

9 A It is.

10 MR. BULSA: Your Honor, we would offer this into
11 evidence. I believe Mr. Robinson had an objection.

12 MR. ROBINSON: Your Honor, the only objection I had to
13 that is I think it's got a bloody scene. It's a little
14 bit, could be inflammatory to the jury to see Mr. --
15 Mr. Young's jacket with all of this blood all over the
16 place. That's the only objection I have to it.

17 THE COURT: Well, I don't think you can tell from this
18 picture whether that's blood or a stain.

19 MR. ROBINSON: It looks pretty bad, is what I am
20 saying.

21 THE COURT: It is not red. I mean, it just looks like
22 it could be an oil spill. I mean, it doesn't look like
23 anything, does it? Look at it. I mean, I assume the
24 jacket was red. In other words, that's not red. That's
25 not blood.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 MR. BULSA: He testified he had a beer, a beer can. I
2 believe that's the beer that he dropped.

3 (Bench conference held off the record.)

4 MR. ROBINSON: I withdraw that objection.

5 THE COURT: All right. Fifteen is admitted without
6 objection.

7 (Photograph marked State's Exhibit No. 15.)

8 MR. BULSA: We're ready to proceed.

9 THE COURT: All right. Bring the jury back.

10 (The following takes place in the presence of the
11 jury.)

12 Q Okay. Mr. Bogan, I believe we were discussing that
13 that item was inside the car. We put up your diagram. I
14 show you State's Exhibit 23 which has been offered and
15 entered.

16 A Yes, sir.

17 Q Does that go with your diagram?

18 A Yes, sir, it does.

19 Q Okay. To assist you with that, let me get these
20 photographs marked.

21 MR. ROBINSON: Without objection, Your Honor.

22 THE COURT: They are admitted.

23 (Photographs marked State's Exhibits Nos. 24 through
24 28.)

25 MR. BULSA: For the record, those are State's Exhibits

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 24, 25, 26, 27 and 28.

2 Q You testified about the placards down.

3 A Yes, sir.

4 Q I want to show you State's 24. Is this an example of
5 those placards?

6 A Yes, sir, it is.

7 Q Okay. And using State's No. 14 in conjunction with
8 State's No. 25, the placard there marking it, what does
9 your report indicate that Item 1 was?

10 A That is a casing.

11 Q That's a casing.

12 A Correct.

13 Q That was found inside the victim's vehicle.

14 A Yes, sir.

15 Q All right. How many casings were found total?

16 A Three casings.

17 Q Three or four?

18 MR. ROBINSON: I'm going to object, Your Honor.

19 Leading.

20 THE COURT: Well, don't lead him.

21 Q What is State's No. 2?

22 A No. 2 is also a casing.

23 Q Okay. So that's two casings. State's No. 3?

24 A Three would be a casing as well.

25 Q Okay. State's No. -- excuse me.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 MR. BULSA: For the record, Your Honor, photograph
2 State's -- Placard No. 2 is State's Exhibit 26; and placard
3 No. 3 is State's Exhibit 27; and State's Exhibit No. 28
4 showing Placard No. 16.

5 A Sixteen is a casing.

6 Q So how many casings were found?

7 A There would be four.

8 Q Okay. And where were one, two and three found?

9 A One, two and three would have been beside the body --
10 one in the car; and two and three would have been beside
11 the body.

12 Q And where would No. 16 have been?

13 A Sixteen was under a jacket across the street from the
14 vehicle where possibly another person was standing.

15 Q I show you State's Exhibit No. 15. Is that, what does
16 this item show?

17 A That is a photograph of the jacket. If you can see
18 across the street, the black sheet, that's where the body
19 and the car was at. And the jacket was on the opposite end
20 of the street. This is the jacket that the casing was
21 under, No. 16.

22 Q Okay. So now back to State's No. 22, the diagram. Is
23 this the positioning of the two vehicles, the positioning
24 of Mr. Evans' body?

25 A Yes, sir.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Q Did you specifically look at Mr. Evans' body?

2 A Yes, sir.

3 Q Describe the condition it was in.

4 A He was laying on his back. His left shoe, and I
5 believe sock, were gone. Maybe his sock was there but just
6 pulled down as if it were gone through.

7 His pants had been gone through, and it looked like
8 his jacket had been gone through. But he was laying face
9 up with his arms outstretched and both legs straight down,
10 not bent in any way.

11 Q He had one shoe off.

12 A Yes, sir, his left shoe, I believe it was.

13 Q And what did you say about his pockets?

14 A They looked like they had been gone through as if
15 someone had stolen money or something.

16 MR. ROBINSON: Objection, Your Honor. This calls for
17 speculation.

18 THE COURT: Sustained.

19 MR. ROBINSON: I ask that be stricken.

20 THE COURT: That'll be stricken.

21 The jury is asked to disregard it.

22 You can rephrase the question. Part of the response
23 was appropriate.

24 MR. BULSA: Yes, sir.

25 Q Was there anything unusual that you noted about his

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 pockets?

2 A They had been gone through.

3 Q The fact that they had been gone through, were they
4 pulled out?

5 A Pulled out, correct.

6 Q Okay. Did you find any rings on his finger?

7 A No, sir, not to my knowledge.

8 The coroner's office is actually the person who takes
9 items from the body. So I wouldn't have collected anything
10 off of the body myself.

11 Q But you examined the body before the --

12 A Yes, sir, and I didn't. I didn't see anything.

13 Q Okay. Did you find a cell phone anywhere in the
14 area --

15 A No, sir.

16 Q -- of this location?

17 A No, sir.

18 Q Okay. When you observed these items and photographed
19 them and documented them on your report and on this
20 diagram, did you then collect those items?

21 A Yes, sir, I did.

22 Q Specifically, did you collect the four shell casings?

23 A Yes, sir, I did.

24 Q And what would you have done with those?

25 A I would have placed them into evidence to be sent to

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 SLED to see if they could determine what type of weapon
2 shot these casings.

3 (Shell casings marked State's Exhibit No. 29 for
4 Identification.)

5 Q Show you State's Exhibit No. 29 for Identification at
6 this point. Do you recognize that exhibit?

7 A Yes, sir, I do.

8 Q Is that what you recovered from the scene?

9 A Yes, sir, it is.

10 Q It was packaged in some plastic. How did you actually
11 package it?

12 A I placed in small containers and marked the
13 containers.

14 Q And then put them into --

15 A Put them into this bag and then sealed the bag with my
16 initials.

17 Q Okay. And the other plastic, what is that?

18 A The other plastic, this plastic and the smaller
19 plastic that my containers are in, would be from SLED.

20 Q And SLED is what?

21 A SLED is the South Carolina Law Enforcement Division.
22 That's where they do our analysis.

23 MR. BULSA: Your Honor, I would offer this into
24 evidence as State's 36, excuse me, 29.

25 MR. ROBINSON: Your Honor, I'm going to object, and I

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 have an issue I need to take up outside the presence of the
2 jury, or I can approach the bench.

3 THE COURT: All right. Let me ask y'all to come up
4 here first.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: Mark it for identification.

8 Q Just so the jury understands, when you collected these
9 and took them off the ground, out of the car, what did you
10 do with them?

11 A When I pick them up off of the ground I place them in
12 a small plastic container, which is marked with the time
13 that I collect them and also the number of which I
14 collected them. Therefore, No. 1 would be No. 1 written on
15 the container.

16 Then I place all of them into this brown envelope and
17 mark the envelope, seal it and initial where I seal it.

18 Q And so you don't actually mark the casing itself.

19 A Not the casing itself.

20 Q And in this exhibit we see these containers,
21 cylindrical containers.

22 A Yes, sir.

23 Q Those are the ones that you put the casings in?

24 A That is correct.

25 Q Okay. And then the purpose of sealing it is what?

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 A That's to be transported to SLED. That way no one
2 else is involved with the chain of custody.

3 I actually package it, seal it, sign it. And no one
4 else opens it. It goes to SLED. They open it from me
5 actually. They receive it from someone else, but actually
6 no one else has access to the inside of that bag but the
7 last person that sealed it, which was me.

8 Q Thank you.

9 Did you recover any actual rounds or bullets at the
10 scene?

11 A At the scene, no, sir.

12 Q You didn't recover anything out of the car.

13 A No bullets, no actual projectiles at the scene.

14 Q Okay. We've got these photographs, State's Exhibits
15 19 through 21. What do those show?

16 A These are photographs of the vehicle after it was
17 moved and sent to the Spartanburg County Maintenance Shop.
18 I had it towed there where we could further take a look at
19 it because, of course, it was dark out there that night.
20 And we like to do a thorough investigation of the car or go
21 through the car entirely.

22 These are photographs of the vehicle after it was
23 towed to the county shop and we started processing it at
24 the, at the county shop.

25 Q Did you recover anything?

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 A Yes, sir. I recovered, I recovered a projectile from
2 the vehicle at the county shop.

3 Q Okay.

4 A Not actually at the scene.

5 Q Okay. So show the jury State's Exhibit No. 18. Is
6 that the driver's window?

7 A That is the reason the glass is not there is whenever
8 it was towed by the county rollback, of course it just
9 shattered completely. But that is the same photograph of
10 the vehicle.

11 Q Step down here with me.

12 A Yes, sir.

13 (Whereupon, the witness left the stand.)

14 Q Using this laser pointer, what is that object in the
15 passenger's seat, that straight object?

16 A This is, if you look, this is looking through the
17 driver's window. And this is the dowel rod that I actually
18 placed through the seat that the hole was in. The hole was
19 going completely through the passenger's seat. And that's
20 a dowel rod that's in that seat that I placed.

21 Q Okay. That was on State's Exhibit 18. Now State's
22 Exhibit No. 19, where is this view taken from?

23 A This is the same dowel rod but going -- we took a
24 photograph from the front of the vehicle so you could see
25 the dowel rod going in.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Over here is the driver's side. Here is the passenger
2 side. The dowel rod is going in through the seat and
3 hitting against the -- there's a center piece between the
4 front door and the back door. And this is the center piece
5 between the two.

6 Q State's Exhibit No. 20, is that another view of it?

7 A That's a view if you're, if you're opening the
8 passenger's-side door and you look in. This is what you
9 see. This is the same dowel rod and the same position
10 going in and striking this center piece that I was telling
11 you about.

12 Q And now State's Exhibit No. 21, what is that showing?

13 A This is the latch. Actually the bullet traveled,
14 struck the shoulder, the seat belt latch mechanism right
15 here and wound up right in this area.

16 Q Okay. And that's where it was recovered from?

17 A Yes, sir, that's where it was recovered from.

18 Q Have a seat.

19 (Whereupon, the witness returned to the stand.)

20 MR. BULSA: Get this marked for identification.

21 (Bullet fragments marked State's Exhibit No. 30 for
22 Identification.)

23 Q I show you what's been marked State Exhibit No. 30.

24 Do you recognize what's in that package?

25 A Yes, sir, I do.

Randall Eugene Bogan
Direct examination by Mr. Bulsa

1 Q Okay. And what is it?

2 A This is the projectile that I just told you about that
3 we recovered from that location there. And it's also, I
4 also placed it in a container, marked it and placed it in
5 another bag and sealed it with my initials on it.

6 Q In the same fashion you did the shell casing.

7 A That's correct.

8 Q Did you have anyone assisting you in the placing of
9 this evidence?

10 A Yes, sir, Shane Dedmon. He was with us. He has since
11 left us and went to Iraq.

12 Q And is Chris Durham in your unit as well?

13 A Yes, sir, he is.

14 Q Was he sent back to the scene?

15 A He was I believe the next day, yes, sir.

16 Q Okay.

17 MR. BULSA: That's all I have at this point, Your
18 Honor. I may recall him in the future, but that is all I
19 have at this point.

20 Q Answer any questions Mr. Robinson has.

21 A Yes, sir.

22 MR. ROBINSON: May it please the Court.

23

24

25

Randall Eugene Bogan
Cross-examination by Mr. Robinson

1 CROSS-EXAMINATION

2 BY MR. ROBINSON

3 Q Officer, you arrived on the scene after the medics had
4 arrived, isn't that correct?

5 A That is correct.

6 Q Okay. And the medics had access to the body, isn't
7 that correct?

8 A That's correct.

9 Q And other people also were there at the scene prior to
10 getting there, correct?

11 A That's correct.

12 Q Okay. Now, in your years of law enforcement that
13 you -- have you had a lot of experience with medics and so
14 forth?

15 A A decent amount, yes, sir.

16 Q Okay. You would agree in terms of, in terms of anyone
17 going through the, either the pants or anything of that
18 nature, you have no idea whether the medics or anyone else
19 went through those, anyone from medical, like medical
20 personnel, went through those pockets, do you?

21 A There would be in my opinion, as you asked, I have
22 never seen a medic go through a pocket on a person that is
23 deceased, because the only thing they do is either tear or
24 cut the clothes off where they can put leads to check and
25 see if there's any pulse at all.

Randall Eugene Bogan
Cross-examination by Mr. Robinson

1 Q But in your experience, to your knowledge, you don't
2 know that night whether or not a medic went through there,
3 correct?

4 A Correct.

5 Q Now, in terms of the, in terms of the bullet path that
6 we're talking about here, I think there are several
7 pictures that Mr. Bulsa --

8 A Inside the vehicle?

9 Q As far as the path. You put in the vehicle, some of
10 these pictures.

11 MR. ROBINSON: Specifically approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 Q Specifically, State's Exhibit 20 and 19, you have put,
15 you have put a path with a stick, isn't that correct?

16 A That's correct.

17 Q And you do that because you want to get the direction
18 of where the bullet came from, isn't that correct?

19 A That's correct.

20 Q Okay. And you would agree that the bullet came from
21 the outside downward looking in, correct?

22 A I would agree that it came from the driver's side,
23 outside driver's side of the vehicle.

24 Q Right. And it went downward, correct?

25 A It went downward, yes, sir.

Randall Eugene Bogan
Cross-examination by Mr. Robinson

1 Q Well, the reason I ask that, you've got these pictures
2 here, which are State's Exhibits 19 and 20. And you would
3 agree that that stick that you have in that car is going
4 downward from the passenger window, excuse me, from the
5 driver's-side window downward towards the other side of the
6 car. You would agree with that, wouldn't you?

7 A That's correct. But I also can't say that it didn't
8 go through the window and take an opposite path once it hit
9 the window.

10 Q Okay.

11 A That's what I am saying.

12 Q Okay. But you'd agree it went through the window and
13 went downwards, correct?

14 A It either went through the window or hit the victim.

15 Q Okay. But the path of the bullet went downwards,
16 correct?

17 A Correct.

18 Q Okay. And in this State's Exhibit 13, is that an
19 accurate representation of how the bullet went through the
20 window?

21 A No, sir, because I believe the door would have to be
22 shut if it went through the window.

23 Q Okay. So it was shut at the time it was shot,
24 correct?

25 A Correct.

Jack Christopher Durham
Direct examination by Mr. Bulsa

1 Q So whoever did this shot through the closed window,
2 correct?

3 A It's possible, yes, sir. As far as I'm concerned, it
4 had to be shot through the window.

5 Q All right. And that was going downward.

6 A One shot did, yeah.

7 Q The path going through the window went downward,
8 correct?

9 A I'm not saying that that one did. I'm saying that a
10 shot went through the window.

11 He actually was shot himself, and so a projectile was
12 in him. And I don't know whether it would have been that
13 projectile or the one that you're concentrating on at a
14 down angle into the seat.

15 MR. ROBINSON: That's all the questions that I have,
16 Your Honor. Thank you.

17 MR. BULSA: Nothing further at this time.

18 THE COURT: You may step down.

19 MR. BULSA: Chris Durham.

20 JACK CHRISTOPHER DURHAM,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA

23 Q If you would, introduce yourself to the jury for us.

24 A Jack Christopher Durham. I work for the Spartanburg
25 County Sheriff's Office.

Jack Christopher Durham
Direct examination by Mr. Bulsa

- 1 Q In what capacity?
- 2 A In C. I. D., criminal investigation division.
- 3 Q Do you go to scenes and collect evidence?
- 4 A I did.
- 5 Q You're not doing that any more?
- 6 A No, sir.
- 7 Q How long were you in that division?
- 8 A About four years.
- 9 Q Did you have an occasion to attend the autopsy of Lee
- 10 Evans?
- 11 A Yes, sir.
- 12 Q Was that on December the 31st of 2004?
- 13 A Yes, sir.
- 14 Q And during that autopsy were any bullets collected
- 15 from his body?
- 16 A Yes, two.
- 17 Q Did you actually witness the collection of those
- 18 bullets?
- 19 A Yes, I did.
- 20 Q And did you receive them into your custody?
- 21 A Yes, sir.
- 22 (Two projectiles marked State's Exhibit No. 31 for
- 23 Identification.)
- 24 Q Show you State's Exhibit No. 31 for Identification.
- 25 Do you recognize that?

Jack Christopher Durham
Direct examination by Mr. Bulsa

- 1 A Yes. That is my handwriting.
- 2 Q Okay. What is that a package of?
- 3 A It's two projectiles taken from the body of the
- 4 victim, Lee A. Evans, by Dr. David Wren.
- 5 Q And Dr. Wren turned them over to you?
- 6 A Yes, sir.
- 7 Q And how did you package those bullets?
- 8 A Dr. Wren gave them to me in vials, and then I just
- 9 placed them in our evidence bags.
- 10 Q Did you seal your evidence bag?
- 11 A Yes, sir, I did.
- 12 Q For what purpose?
- 13 A Just to contain the evidence and documentation.
- 14 Q And were examinations done?
- 15 A Yes, sir.
- 16 Q Did you have an occasion to go to Sunnyglen Drive?
- 17 A Yes, sir, I did.
- 18 Q And when did you go to Sunnyglen Drive?
- 19 A That same day about 12:28. Detective Taylor called me
- 20 out there and said he found a bullet inside of a wood panel
- 21 on a truck. And he showed me where it was.
- 22 Q Okay. Did you photograph that?
- 23 A Yes, sir, I did.
- 24 Q State's Exhibit No. 16, does that show the vehicle?
- 25 A Yes.

Jack Christopher Durham
Direct examination by Mr. Bulsa

1 Q Okay. State's Exhibit No. 17, is that a closeup view
2 of it?

3 A Yes, it is.

4 Q All right. And did you actually dig that bullet out?

5 A Yes, I did.

6 Q Did you put it into evidence?

7 A Yes, I did.

8 (Bullet marked State's Exhibit No. 32 for
9 Identification.)

10 Q Let me show you what's been marked for identification
11 State's Exhibit No. 32. Do you recognize that package?

12 A Yes, sir.

13 Q And what is that?

14 A Projectile collected from the side of a Chevy truck
15 with South Carolina tag 448 FRP.

16 Q And how did you package that?

17 A I packaged it in the plastic tube and placed it in a
18 plastic bag and dropped it into an evidence bag and sealed
19 it.

20 Q Okay. Also for later testing?

21 A Yes, sir.

22 Q All right. While you were out there did you make any
23 other attempts to find any more evidence?

24 A No, sir.

25 Q Sunnyglen. Do you always find everything?

Jack Christopher Durham
Direct examination by Mr. Bulsa

1 A Excuse me?

2 Q Do you always find everything when you go to a scene?

3 A We try to.

4 Q There's no way of knowing whether you get everything.

5 A There's no way of knowing.

6 Q Please answer any questions Mr. Robinson has.

7 MR. ROBINSON: I have no questions of the witness,
8 Your Honor.

9 THE COURT: Thank you. You may step down.

10 MR. BULSA: Your Honor, we ask he be excused.

11 THE COURT: You may be.

12 (Whereupon, the witness was excused.)

13 THE COURT: Ladies and gentlemen, we're going to take
14 a short break before we go further.

15 So I'll ask you to please go to your jury room. Do
16 not discuss the case. I'll bring you back in a few
17 minutes.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court is in recess for 15 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Bring the jury in, please.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: All right. We'll continue with the

David Taylor
Direct examination by Mr. Bulsa

1 state's presentation of evidence.

2 MR. BULSA: The state calls David Taylor.

3 DAVID TAYLOR, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Please introduce yourself to the jury.

7 A My name is David Taylor.

8 Q Who are you employed with?

9 A Spartanburg County Sheriff's Office.

10 Q In what capacity?

11 A I am a violent crime investigator.

12 Q How long have you been an investigator?

13 A I've been an investigator for about 16 years.

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

15 A Almost 20.

16 Q And were you involved in the investigation of this
17 case?

18 A Yes. I did.

19 Q When did you first become involved?

20 A I was notified by Sergeant Cooper on the 30th of
21 December back in '04 to respond and assist now Sergeant
22 Wood -- it was Investigator Wood back then -- with a
23 homicide investigation.

24 Q So you actually went to the scene.

25 A Yes, I did.

David Taylor
Direct examination by Mr. Bulsa

1 Q About when did you arrive?

2 A It was the latter part of the night. I'm going to say
3 around 10:00-ish, 10:30-ish, somewhere in there.

4 Q What was taking place when you arrived?

5 A A lot of folks around. I had to actually park half
6 way up the hill from, from the scene. And then I got with
7 Investigator Wood once I found him.

8 Q Who actually was the lead investigator?

9 A It was Sergeant -- Investigator Allen Wood then.

10 Q Has he been promoted?

11 A He has.

12 Q To a sergeant.

13 A Yes. He has.

14 Q Did y'all take the crime scene over from Matt Wilde?

15 A He was on -- he was the first investigator on the
16 scene. He was on the second shift at that time.

17 Q Were you and Investigator Wood directing the
18 investigation?

19 A Basically, Investigator Wood was.

20 Q What was your actual role?

21 A Assisting, basically a backup, helping take
22 statements, run here, run there.

23 Q Did you meet with Leon Wood, or excuse me, Leon Young?

24 A I did.

25 Q And where did you meet with him?

David Taylor
Direct examination by Mr. Bulsa

- 1 A At the Allen Bennett Hospital.
- 2 Q What condition was he in?
- 3 A He was lying there on the table gurney being assisted
- 4 by medical folks, and Investigator Clark was actually
- 5 talking with him.
- 6 Q How long did you investigate this case?
- 7 A I stayed on it until all the way through.
- 8 Q Okay. When was the first person arrested?
- 9 A I believe it was on March the 30th.
- 10 Q So three months went by before an arrest was made.
- 11 A Yes, sir.
- 12 Q Who was the first person arrested?
- 13 A Margaret Lemke.
- 14 Q Margaret Alicia Lemke?
- 15 A Correct.
- 16 Q Where did you find her?
- 17 A He found her in Columbia, South Carolina.
- 18 Q Did you meet with her?
- 19 A I did.
- 20 Q Were other suspects developed from her?
- 21 A Yes, sir.
- 22 Q Do you recall when the defendant was arrested?
- 23 A I think it was about a week or two, maybe a week
- 24 later.
- 25 Q Okay. Prior to today and during the investigation

David Taylor
Direct examination by Mr. Bulsa

1 period and after the arrest, if necessary, did you have an
2 opportunity to sit down and speak with the defendant?

3 A The defendant?

4 Q Yes, sir.

5 A Yes, I did.

6 Q Okay. Who was present when you spoke with him?

7 A Investigator Bryant who is sitting there beside you.

8 Q And where did y'all speak with him?

9 A At the sheriff's office.

10 Q Would that have been on July the 11th?

11 A Yes, sir.

12 Q I show you what's been marked State's Exhibit No. 1
13 for Identification. Do you recognize that?

14 A I do.

15 Q What is it?

16 A It's a Spartanburg County Sheriff's Department
17 Preinterrogation Waiver Form.

18 Q And does it document the date and time when you spoke
19 to Mr. Lynch?

20 A It does.

21 MR. ROBINSON: Without objection.

22 MR. BULSA: State's Exhibit No. 1 entered without
23 objection.

24 (Preinterrogation waiver form marked State's Exhibit
25 No. 1.)

David Taylor
Direct examination by Mr. Bulsa

1 Q You've got two names for the defendant. Would you
2 explain why that is?

3 A Yes, sir. During the background of the investigation
4 we developed two names that Mr. Roy David McDowell, Jr.,
5 a/k/a Roy David Lynch, was going by.

6 Q So is that why you put both names on that form?

7 A Yes, sir.

8 Q What name did he actually sign as?

9 A Roy D. McDowell, Jr.

10 Q And this preinterrogation waiver form, what is the
11 language on that form?

12 A Basically, it tells the person that we're going to
13 talk to and interview their rights.

14 Q Okay. Did you read him the rights, or did
15 Investigator Bryant?

16 A Investigator Bryant read him his rights.

17 Q Were you present when they were read to him?

18 A Yes, sir, I was.

19 Q Did he understand those rights?

20 A Yes, sir, he did.

21 Q Would you read those to the jury as they're written on
22 that form?

23 A "Number one, I have the right to remain silent; number
24 two, anything I say can and will be used against me in a
25 court of law; number three, I have the right to talk to a

David Taylor
Direct examination by Mr. Bulsa

1 lawyer, to have him present with me while I am being
2 questioned; number four, if I cannot afford to hire a
3 lawyer, one will be appointed to represent me before any
4 questions if I so wish; number five, I have the right to
5 stop answering questions at any point in the questioning.

6 "The above rights have been read to me by;" and Jason
7 Bryant puts his first initial and last name in that line.

8 "I have read the same and I understand my rights
9 fully." And it's signed by Roy D. McDaniel (sic), Jr.

10 Q And did you witness that for him?

11 A I did.

12 Q During that initial stage of the interview did he
13 understand what was taking place?

14 A Yes, sir he did.

15 Q Did he, in fact, ask to speak with you and
16 Investigator Bryant?

17 A He did earlier that morning.

18 Q Okay. Is that noted on that form somewhere?

19 A It is at the bottom.

20 Q All right. Now, during the interview did he draw a
21 diagram for you?

22 A He did.

23 Q I show you State's Exhibit No. 3 for Identification.
24 Do you recognize that?

25 A I do.

David Taylor
Direct examination by Mr. Bulsa

1 Q Does it have the defendant's signature?

2 A It does.

3 Q Did you witness it?

4 A I did.

5 MR. ROBINSON: Without objection.

6 (Map marked State's Exhibit No. 3.)

7 Q State's Exhibit No. 3. This actually has a date, July
8 the 11th of '05. Time is 2:15 p.m.

9 A Yes, sir.

10 Q And the interview began at 1:32 p.m..

11 A Yes, sir.

12 Q So this was done during the discussion with --

13 A Interview with him, yes, sir.

14 Q Was this done in his own hand?

15 A Yes, sir. This's his drawing, I believe.

16 Q Okay. Other than the signatures and the date and the
17 time, is the rest of that his?

18 A Yes, sir, that's his.

19 Q So we see a vehicle up there named Alicia's car.

20 Would that be an Alicia Margaret Lemke?

21 A That is correct.

22 Q See a house denoted as Shad's house. Is that the
23 house we saw on those pictures earlier?

24 A Yes, sir.

25 THE COURT: Be careful with the microphone, please.

David Taylor
Direct examination by Mr. Bulsa

1 THE WITNESS: Yes, sir. I am sorry.

2 Q See a series of houses across the street, one of those
3 being Ms. Whitesides?

4 A Yes, sir, right where the, where the Leon name is.

5 Q Okay. And then we have a vehicle, says Lee's car. He
6 noted that as Lee's car?

7 A Yes, sir.

8 Q He's got, "Me and Antwon" with arrows. The drawing of
9 that car has got a little spot right here. Is that
10 supposed to denote the front of the car?

11 A Yes, sir.

12 Q So he's got the car parked in the correct direction.

13 A Yes, sir.

14 Q So that means Ms. Lemke's car would have been parked
15 to go out this way.

16 A Yes, sir.

17 Q Is that right? Okay. So he puts himself and Antwon
18 both on the driver's side of that vehicle.

19 A Yes, sir.

20 Q Did you have an occasion to take Mr. Lynch or McDowell
21 anywhere?

22 A Yes, sir.

23 Q Describe that for us.

24 A After the interview completed we had set up for the
25 next day. Investigator Bryant and myself to -- Mr. Lynch

David Taylor
Direct examination by Mr. Bulsa

1 wanted to assist in looking for, Mr. McDowell-Lynch looking
2 for, some items that he had spoke about he had tossed in a
3 wooded area off of Foster Street there in Duncan.

4 Q What sort of items did he say?

5 A A couple of toboggans, a pair of boots and a jacket.

6 Q And did you find anything?

7 A Yes, we did.

8 Q Did you find it on that day or a previous day?

9 A We actually found it on a previous day.

10 Q And how was that?

11 A Based on the other statements.

12 Q Okay. Would one of them have been Ms. Lemke?

13 A Absolutely.

14 Q So you had previously gone to an area. And what did
15 you find?

16 A Found two, two. Some people call them toboggans,
17 skully caps. They're sock kind of hats. And a, a pair of
18 boots, I believe it was.

19 Q Now, the area where you found those items, is that the
20 same area where Mr. Lynch took you to?

21 A Yes, sir.

22 Q Did he state whether anything was taken from
23 Mr. Evans?

24 A Yes, sir.

25 Q What?

David Taylor
Direct examination by Mr. Bulsa

- 1 A I recall a cell phone.
- 2 Q Anything else?
- 3 A I don't recall that.
- 4 Q Okay. Did he make any comments about that happened to
- 5 that cell phone?
- 6 A Yes, he did.
- 7 Q What?
- 8 A He said it was thrown out the window.
- 9 Q Did he take you to that location?
- 10 A He attempted to, yes, sir.
- 11 Q What do you mean, he attempted to?
- 12 A We, we couldn't narrow it down to the right location.
- 13 We took us a couple of roads, and just he could not narrow
- 14 that down.
- 15 Q Did he comment to why it was thrown out?
- 16 A He actually commented that it kept ringing.
- 17 Q Detective, answer any questions Mr. Robinson may have
- 18 of you.
- 19 A Yes, sir.
- 20 MR. ROBINSON: May it please the Court.
- 21 THE COURT: Yes, sir.
- 22 MR. ROBINSON: Approach the witness, Your Honor?
- 23 THE COURT: Sure.
- 24
- 25

David Taylor
Cross-examination by Mr. Robinson

1 CROSS-EXAMINATION

2 BY MR. ROBINSON

3 Q Officer, you have the, you have the statement that was
4 given by, by Mr., Mr. Lynch, don't you, in your possession?

5 A No, sir, I do not.

6 Q Okay. Officer, is this the statement that you took
7 from Mr. Lynch?

8 A Yes, sir.

9 Q And that is 11 page, isn't that right?

10 A It is 11 pages.

11 Q And that's a statement you took from him, correct?

12 A Yes, sir.

13 Q Now, you would agree with me that he was very
14 cooperative during this period. Wasn't he?

15 A Yes, sir. He was.

16 Q In fact, he was willing to answer any questions that
17 y'all had, isn't that correct?

18 A Yes, sir. He did.

19 Q And he actually came to you to cooperate.

20 A Yes, sir, he did.

21 Q Let's turn to that statement for a second to see what
22 Mr. Lynch said to you.

23 There is nothing in that statement. You just said a
24 second ago regarding this --

25 MR. BULSA: It's not in evidence yet.

David Taylor
Cross-examination by Mr. Robinson

1 MR. ROBINSON: If I can get this marked. It's marked
2 as a state's exhibit, Your Honor. But I would have it
3 marked for identification purposes only.

4 THE COURT: Well, let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 Q I'm sorry, officer.

8 The statement that you have, that you have in front of
9 you, that is a complete statement that he gave you under
10 oath, isn't that correct?

11 A Yes, sir.

12 Q And that's approximately 11 pages, correct?

13 A It is, it is.

14 Q And you would agree that he did not mention anything
15 about a cell phone in that statement. You would agree with
16 that, wouldn't you?

17 A I would agree with that. I'd have to read it.

18 Q Why don't you have a chance to read it? Why don't you
19 read it for a second and see.

20 (Pause.)

21 A So what was your question again, sir?

22 Q The question is in your statement you took under oath
23 from him, that 11-page exhibit, he makes no mention of
24 throwing any cell-phone phone out of the car, does he?

25 A No, sir; no, sir.

David Taylor
Cross-examination by Mr. Robinson

1 Q And you have read that statement pretty completely,
2 haven't you?

3 A Yes, sir, I have.

4 Q All right. Now, in terms of your notes of any
5 conversations you had with him, you don't have any notes
6 with you today, do you, of your conversation with him?

7 A No, sir.

8 Q Okay. And you didn't record any of this, the
9 conversations that you had with him.

10 A I did have, I made a, an investigative report, I did,
11 yes, sir.

12 Q Did you?

13 A Uh-huh.

14 Q Okay. But you didn't make anything in that
15 investigative report of any sort of cell phones that
16 were --

17 A No, sir, I did not.

18 Q So not only do you not have it in the written 11-page
19 statement that he gave you that you said he was cooperative
20 about a few minutes ago, but you also don't have anything
21 in your investigative notes where he ever talked about any
22 sort of cell phone, do you?

23 A I do not. I had him confused with another defendant,
24 sir.

25 Q Okay. So what you're telling this court then, what

David Taylor

Cross-examination by Mr. Robinson

1 you're telling this jury, is that you don't have any record
2 of him telling you about throwing any cell phone out of the
3 car. Do you?

4 A No, sir. I don't recall that. No, sir.

5 Q That's all I want to know. And you were confusing
6 him, David, with another defendant, correct?

7 A That is correct.

8 Q So the whole conversation you talk about, that you
9 talked about with Mr. Bulsa a second ago, had to do with
10 another defendant and not this defendant, correct?

11 A We did try to look for items, yes.

12 Q The question was this. Everything as far as your
13 conversations you talked about regarding this cell phone
14 allegedly thrown out of the car, that happened with another
15 defendant.

16 A That is correct, that is correct, yes, sir.

17 Q Not David.

18 A Right.

19 MR. ROBINSON: That's all I have of this witness.

20 Q Thank you.

21 MR. BULSA: Nothing further.

22 THE COURT: You may step down.

23 MR. BULSA: The state calls Alicia Lemke.

24 MR. ROBINSON: May it please the Court. We have
25 something. May we approach the bench, Your Honor?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 THE COURT: Yes, sir.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 MARGARET ALICIA LEMKE,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q All right. Ms. Lemke, introduce yourself for us to
8 the jury.

9 A My name is Margaret Alicia Lemke.

10 Q Make sure you speak up loud. Okay?

11 A I'm 24 years old.

12 Q I may come back to that, but I'm going to question you
13 first. Okay?

14 A Okay.

15 Q Where do you now live?

16 A I live in Columbia, South Carolina.

17 Q How long have you been there?

18 A Almost two years.

19 Q When did you move there?

20 A When did I move there? The beginning of 2005.

21 Q Were you raised here in Spartanburg County?

22 A I was.

23 Q What community?

24 A I lived in Duncan until I was 11, and I moved to
25 Moore..

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

- 1 Q Did you graduate?
- 2 A I got my G. E. D.
- 3 Q When?
- 4 A In '04.
- 5 Q And how old are you?
- 6 A Twenty-four.
- 7 Q You now work?
- 8 A I do.
- 9 Q What kind of job do you have?
- 10 A I'm a server at a restaurant.
- 11 Q Now, when you lived in Spartanburg County did you
- 12 work?
- 13 A I had several different jobs.
- 14 Q Where were you living before you moved to Columbia?
- 15 A With my mother in Moore.
- 16 Q Now, Ms. Lemke, did you know Antwon Salters?
- 17 A I did.
- 18 Q How long had you known him?
- 19 A Three, three years maybe, yes.
- 20 Q Did someone introduce you to him?
- 21 A Yes, his girlfriend Christina.
- 22 Q Christina?
- 23 A Yes.
- 24 Q Do you know her last name?
- 25 A Maldinato.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

- 1 Q Christina Maldinato?
- 2 A Yes.
- 3 Q She's not a part of this case at all, is she?
- 4 A No.
- 5 Q And what kind of friendship or relationship did you
- 6 develop with Mr. Salters?
- 7 A At first we were just friends through Christina. And
- 8 then he and Christina broke up. And I continued to be in
- 9 the group of friends with him.
- 10 Q Was one of those friends Mr. Lynch-McDowell?
- 11 A Towards the end, yes.
- 12 Q Okay. What do you call the defendant? What name do
- 13 you call him?
- 14 A D. J.
- 15 Q D. J. Do you know what that stands for?
- 16 A I know the D stands for David, but I'm not sure what
- 17 the J stands for.
- 18 Q Okay. Towards the end of your relationship with
- 19 Mr. Salters, you met the defendant.
- 20 A Yes. I met D. J. through his girlfriend Nikki.
- 21 Q And Nikki, what's her full name?
- 22 A Nicole Holmes.
- 23 Q Holmes. All right. Did you also know Lee Evans?
- 24 A I did not.
- 25 Q You did not know him at all.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

- 1 A No.
- 2 Q Did you know anybody by the name of Shad?
- 3 A I knew of him.
- 4 Q Was there a discussion on January -- on December the
- 5 30th of 2004 about going to Shad's?
- 6 A No.
- 7 Q Did you meet up with Mr. Salters on that day?
- 8 A I did.
- 9 Q And did y'all go anywhere?
- 10 A We went. We rode through Fairmont. We ended up at
- 11 Nikki and D. J.'s trailer in Duncan.
- 12 Q When you say we, who is the we?
- 13 A Me and Antwon. And we picked up Red on the way.
- 14 Q Who is Red?
- 15 A Red Weatherspoon. I was not friends with him per se,
- 16 but I knew of him. I had seen him.
- 17 Q Whose car were you driving?
- 18 A Mine.
- 19 Q Did you always drive your car?
- 20 A I did. I was the only one in the group with a
- 21 vehicle.
- 22 Q And so you drove Mr. Salters around.
- 23 A Yes.
- 24 Q Did you ever have the occasion to drive Mr. Lynch
- 25 around?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A Yes.

2 Q So on the 30th, the day of this incident, you and
3 Antwon and Mr. Weatherspoon go to whose place?

4 A Antwon, Red and myself go to Nikki and D. J.'s trailer
5 in Duncan.

6 Q Okay. So they were living together.

7 A Yes.

8 Q Had you been there before on other occasions?

9 A Yes.

10 Q So that was a common occurrence for y'all to do?

11 A It was.

12 Q Did you go over there with anything specific in mind?

13 A Not on the way over there, no. It was later that we
14 had the specifics come up.

15 Q Okay. What occurred when you were at D. J.'s house?

16 A We all went into his back bedroom, and conversation
17 proceeded to lead us into thoughts of a robbery.

18 MR. ROBINSON: Objection, Your Honor. Hearsay.

19 THE COURT: Overruled.

20 Q Okay. And describe that further if you would.

21 A D. J., Antwon, myself, Nikki and Red and Nikki's
22 cousin, Tina, was in the room with us.

23 We all discussed that we were all broke. It was after
24 Christmas. None of us had any money nor drugs. So the
25 discussion was about how we could get either money or

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 drugs.

2 Q And how were y'all to do that?

3 A The plan was to rob someone.

4 Q Did you have a specific name in mind, or person?

5 A Not at the time, we didn't.

6 Q How long did this discussion last?

7 A Twenty minutes.

8 Q Did you ever see any weapons at that residence?

9 A I did. I saw two guns, two handguns.

10 Q In whose possession?

11 A They were originally in D. J.'s possession. He gave
12 one of them to Antwon.

13 Q That was on the night in question during this
14 conversation?

15 A Yes.

16 Q So you actually saw the transfer of a weapon from
17 Mr. Lynch, the defendant, D. J., to Mr. Salters.

18 A I did.

19 Q And then he also, Mr. Lynch, had one on himself.

20 A Yes.

21 Q So did y'all then leave out of the house?

22 A We did. We had sat and talked a few more minutes.
23 And then we all got in the car and proceeded to go to
24 Sunnyglen, which was identified by Red.

25 Q Now, who all went?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A Myself, Antwon, D. J., Nikki, Red and Tina. But we
2 dropped her off at her grandmother's house.

3 Q So the six of you got in your car. What kind of car
4 is it?

5 A It's a '88 Ford Thunderbird.

6 Q How many doors?

7 A Two.

8 Q So the six of you got in, but you dropped Tina off.

9 A Yes.

10 Q And then where did the five of you go?

11 A We went to Sunnyglen, which is in, on the edge of
12 Greer.

13 Q Are you familiar with that area?

14 A I've been there a time or two, but that was not a
15 regular hangout spot, so to speak.

16 Q Why did you go to that area?

17 A Red said that he knew several people that lived out
18 there that were drug dealers that were possible targets for
19 this, this day.

20 Q And describe what took place when you got to that
21 area.

22 A We rode around the block of the neighborhood,
23 Sunnyglen, several times. Red pointed out two or three
24 different houses. One of them, no one was home. One of
25 them, a party was going on.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 As we rode around the block the second or third time
2 there was a car sitting in front of a house. And Red said
3 that that was Lee Evans. And Nikki agreed with him.

4 After that point it was discussed that I would park
5 around the corner and that Antwon and D. J. would go around
6 the corner and rob Lee.

7 Q Was that house that car was in front of, is that one
8 of the houses that Red pointed out?

9 A It was. He was one of the known neighborhood drug
10 dealers.

11 Q So the house itself was a potential target.

12 A It was. But it didn't look as if anyone was home.

13 Q But there was a car parked outside.

14 A Yes.

15 Q So then what happened when that car was identified?

16 A After the car was identified I parked around the
17 corner behind some trees out of sight.

18 Antwon and D. J. got out of the car. They had, each
19 of them had, a gun, and they had a gym bag. And they went
20 around the corner and proceeded to...

21 Q Were you in a position to see what they did?

22 A I was not. There was a line of trees between me and
23 them.

24 Q When they got out of the car did they have their
25 weapons in their hands?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A Not that I could see.

2 Q So were they on their person?

3 MR. ROBINSON: Objection, Your Honor. She's asked and
4 answered. She says she doesn't know what they -- if they
5 were carrying.

6 THE COURT: Sustained.

7 MR. BULSA: My question was did she see them in their
8 hand. She said no. And then I asked her if she saw them
9 on their person.

10 THE COURT: Well, you can rephrase it to clarify what
11 timeframe we're talking about.

12 MR. BULSA: Yes, sir.

13 Q You stated that they got out with guns. How do you
14 know that?

15 A I saw the guns in their pockets at the house. I knew
16 that they had the guns on them when we left.

17 Q Okay. Did they take them out in the car?

18 A No.

19 Q At all? How far away approximately were you from
20 where the -- Lee Evans' car was?

21 A Forty or 50 yards.

22 Q Was his car in sight of your car?

23 A No, it was not.

24 Q Was there something in between?

25 A There was. There was a line of pine trees in between

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 our cars.

2 Q Okay. Which way were you parked?

3 A I was parked going away from the scene.

4 Q Ms. Lemke, I'm going to show a diagram and ask you a
5 few questions about the positioning.

6 MR. BULSA: Okay. We have previously discussed
7 State's Exhibit 6. And State's Exhibit 7 has also been, is
8 being offered. I believe without objection.

9 MR. ROBINSON: That's without objection, Your Honor.

10 THE COURT: It's admitted.

11 (Aerial photograph marked State's Exhibit No. 7.)

12 Q Start first with State's Exhibit 7. It's an overview
13 of the area of Sunnyglen. You said you drove around. Are
14 those the streets you drove on?

15 A Yes, sir.

16 Q Okay. Now, State's Exhibit No. 6 is a closeup view of
17 Amy Gray Street and Sunnyglen Drive.

18 A Yes.

19 Q Does that show the location of where Lee Evans' car
20 would have been?

21 A It does.

22 Q Approximately where would it have been?

23 A It would have been in front of the house with the
24 lighter roof on the corner.

25 Q Amy Gray and Sunnyglen.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q Are you describing this house?
- 3 A I am.
- 4 Q And where would you have parked your vehicle?
- 5 A We were on Amy Gray Street behind the trees.
- 6 Q These trees?
- 7 A Yes, on the other side of those, yes.
- 8 Q You would have parked on which side of the street?
- 9 A On the inside.
- 10 Q This side?
- 11 A Yes.
- 12 Q Facing this direction?
- 13 A Yes.
- 14 Q So these trees were blocking any view you had.
- 15 A They were.
- 16 Q Just so that it's clear, this house is the house, one
- 17 of the houses that Red pointed out.
- 18 A It is.
- 19 Q All right. What did you and Nikki and Red do while
- 20 you are sitting in the car?
- 21 A While we were sitting in the car there were
- 22 discussions of how long we thought this would take and what
- 23 did we think was happening.
- 24 Up until we heard the gunshots it was fairly calm in
- 25 the car. After the gunshots, we were all in a panic. I

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 was -- I put the car in first and took the brake off
2 preparing to leave. And Nikki told me that --

3 MR. ROBINSON: Objection, Your Honor. Hearsay..

4 THE COURT: Well, let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: Overrule the objection.

8 Q You're saying Nikki had told you to stay?

9 A Yes. She said that we shouldn't leave them behind,
10 that if something had happened that we didn't need to leave
11 them behind.

12 Q Why were you leaving?

13 A Earlier in the day Antwon had told me if you hear
14 shots --

15 MR. ROBINSON: Objection, Your Honor. Hearsay.

16 THE COURT: Rephrase it. Timeframe.

17 MR. BULSA: Yes, sir. I understand..

18 Q When you say earlier in the day, was that before your
19 meeting with D. J. at his place?

20 A No. It was after. It was on the way to Sunnyglen.
21 He told me that if I heard shots to get out of there.

22 Q Okay. Do you know why you were going to get out of
23 there?

24 A Well, gunshots are never good. So I think that he was
25 telling me that for my own protection.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 MR. ROBINSON: Objection, Your Honor. That calls for
2 speculation.

3 THE COURT: Sustained.

4 Q Nonetheless, you tried to leave. And Nikki said stay.

5 A Right.

6 Q And what happened after the gunshots?

7 A We waited another two minutes. And Antwon and D. J.
8 came running to the car. D. J. had the bag in his hand but
9 dropped it on the way back. Antwon stopped, went back and
10 picked it up. So he got to the car after D. J. did.

11 Q Before they got back to the car had you seen anybody
12 walking on the street?

13 A I did. There was an older man maybe in his 40's.

14 Q Where was he walking?

15 A He was coming from the opposite side of the street
16 coming towards us.

17 Q Coming down Amy Gray?

18 A He was.

19 Q So he would have been walking in the direction of
20 Sunnyglen Drive.

21 A He was.

22 Q Could you hear the shots? Did you hear shots after he
23 passed you?

24 A Yes. It was after he passed.

25 Q Okay. When D. J. and Antwon got back to the vehicle,

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 what occurred?

2 A Antwon said turbo on, and we left and took the back
3 roads to -- we went through Fairmont and ended up in Duncan
4 Village.

5 Q Did they have anything with them they didn't leave
6 with when they left the car? Did they come back with
7 anything else?

8 A Antwon had a cell phone. And he threw that out of the
9 passenger-side window on the way, on the back roads on the
10 way to Fairmont.

11 Q And where did y'all wind up that evening?

12 A We wound up in Duncan Village at Red and -- Red Peake
13 and Dina's apartment.

14 Q Were those two people there?

15 A They weren't.

16 Q So how did y'all get in?

17 A Antwon had a key.

18 Q So the five of you arrived back at that location?

19 A Yes.

20 Q What took place at that location?

21 A Once we got there Antwon asked Nikki to go up to her
22 grandmother's house and get Dina.

23 When they got back we turned on the news to see if
24 this had hit the news yet. And Antwon proceeded to tell us
25 the details of what happened at the car.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 Q Did you see the guns again?

2 A Not at that point.

3 Q When was the next point you saw them?

4 A The next time I saw --

5 Q Let me stop you there.

6 MR. BULSA: May we approach, Your Honor?

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 MR. BULSA: Thank you, Your Honor.

10 Q Ms. Lemke, let me ask you this first. Let me go back
11 one step.

12 What was the demeanor or how were they acting, D. J.
13 and Antwon, when they got back to the vehicle?

14 MR. ROBINSON: I'm going to object. Your Honor, it
15 calls for speculation.

16 THE COURT: Overruled.

17 Q Go ahead and answer.

18 A D. J. was fairly quiet. He was in the back seat
19 behind the passenger seat. And he was fairly quiet on the
20 way home, well, on the way to Red and Dena's apartment.

21 Antwon was slightly panicked. He, he, he was saying
22 that, you know, what are we going to do.

23 MR. ROBINSON: Objection, Your Honor. Hearsay.

24 THE COURT: Overruled.

25 A He was saying what are, what am I going to do, you

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 know.

2 I was asking him what happened, what happened, and he
3 said not now. He didn't -- I guess he wasn't in the state
4 of mind to tell me what had happened.

5 It was later when we got to the apartment when he
6 calmed down and was able to tell what happened.

7 Q So was there a discussion at Red and Peake's apartment
8 about what happened?

9 A There was.

10 Q Was D. J. present?

11 A He was.

12 Q Was he involved in that discussion?

13 A He agreed to things. He didn't add much to the story,
14 but he just kind of, he shook his head and agreed to what
15 Antwon was telling us.

16 Q Okay. What description was given at the apartment
17 about what happened?

18 A Antwon said that they approached the car. Lee Evans
19 was in the driver's side, and he was talking on the phone.

20 At this time a window was busted out with the butt of
21 a gun. From what I understand, D. J. was the one that
22 busted out the window. He said that it took him several
23 times to break the window because he had a hurt finger.

24 At this point Antwon -- Antwon was supposed to be the
25 muscle and D. J. was the lookout. And he said that Antwon

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 said that --

2 MR. ROBINSON: I am going to object again, Your Honor.
3 Hearsay.

4 THE COURT: Well, let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MR. BULSA: Thank you, Your Honor.

8 THE COURT: Rephrase the question.

9 Q Ms. Lemke, let me ask you specifics about the
10 question.

11 You actually made a comment that D. J.'s role was to
12 be the lookout.

13 A Yes.

14 Q Did that role ever change? Did you learn that that
15 role ever changed during that conversation?

16 A Antwon had told me that -- he phrased it just like
17 this. He said that D. J. had --

18 MR. ROBINSON: Your Honor, I'm going to object. I
19 would ask for a foundation to be laid here as far as when
20 this was said.

21 MR. BULSA: I can ask that question.

22 Q Was this during the same conversation that you had
23 just been talking about --

24 A Yes..

25 Q -- when everybody else was present?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q D. J. was present.
- 3 A Yes.
- 4 Q What comment did he say about D. J.?
- 5 A He said that D. J. was supposed to be the lookout but
- 6 that he let greed get in the way and he was in the car too.
- 7 Q What was D. J.'s reaction to that comment?
- 8 A He didn't have much of a reaction.
- 9 Q He didn't deny it?
- 10 A No.
- 11 Q Okay. Did D. J. himself ever comment about Lee Evans
- 12 being on the ground?
- 13 A He did.
- 14 Q And what kind of comment did he make himself?
- 15 A He said after Antwon had shot him in the car in the
- 16 abdomen that Antwon pulled him out of the car onto the
- 17 ground and he was laying in the fetal position. And D. J.
- 18 said that he then kicked him in the stomach and told him to
- 19 unfold so that he could search his pockets.
- 20 Q Was there any discussion or comment about another
- 21 person coming onto the, into the area?
- 22 A There was. The man that walked past the car a few
- 23 minutes before, he approached the car. And Antwon said
- 24 that he had a beer bottle in his hand and he was coming to
- 25 help Lee Evans. And Antwon said that he shot at him and

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 was not sure if he had hit him at that point but that he
2 did land on the ground.

3 Q What was D. J. doing?

4 A D. J. was searching through the car. At this point he
5 said that the trunk was -- had been popped and they were
6 looking through the trunk and the back seats and the glove
7 compartment.

8 Q While y'all were at Red and Dina's apartment did you
9 watch the news?

10 A We did.

11 Q Did anything come on the news about this incident?

12 A It did. It showed the helicopter coming to pick Lee
13 up. And at that point he was in the hospital but he had
14 not died yet.

15 Q What did everybody say? What was the attitude in the
16 house at that point?

17 A The attitude in the house was panicked, what are we
18 going to do.

19 We knew that everyone was in it just as deep as the
20 two that went to the car. And the discussion was what are
21 we going to do, are we going to stay here and pretend like
22 it didn't happen or are we going to leave and try and stay
23 as far away from this as we can. It was just a general
24 panic in the, in attitude in the house.

25 Q And what was decided?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A It was decided that we should leave. Antwon had aunts
2 and uncles and family in Saint Petersburg, Florida, and it
3 was decided --

4 MR. ROBINSON: I'm going to object, Your Honor.
5 Relevance.

6 THE COURT: Overruled.

7 Q So he had aunts and uncles where?

8 A In Saint Petersburg, Florida.

9 Q Who all was going to leave the area?

10 A All six of us.

11 Q So by this time Dina had been brought back.

12 A Yes. She was, she was there for the story, the
13 details of the, what had happened while she was at her
14 grandmother's.

15 Q And how was D. J. acting about --

16 A At this point he was still very quiet about the whole
17 situation. I wouldn't say he was calm, but he didn't say
18 much either.

19 Q Was he in agreement to leave?

20 A That he had been shot?

21 MR. ROBINSON: I'm going to object to that. It calls
22 for speculation, Your Honor.

23 THE COURT: Rephrase it.

24 Q Was he in, was he in agreement to leave? Was he
25 commenting about leaving the area as well?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Did he and Nikki go anywhere prior to leaving?

3 A They did. They walked a block and a half distance to
4 their trailer and said that they were going to go pack up
5 some things.

6 Q And did they then meet back up with you?

7 A At that point Red, Antwon, Dina and myself went to my
8 house so that I could pack up some things and take a
9 shower.

10 While we were at my house, well, at my mother's house,
11 D. J. and Nikki called and said that they were scared and
12 they were ready to leave and come and get them.

13 So I finished packing up my little bit of things, and
14 we got in my car and went back to Nikki and D. J.'s trailer
15 and picked them up.

16 Q And then where did you go?

17 A We went to Fairmont to what we had hoped to pick up
18 some, some weed to smoke on the way down to Florida. But
19 it was early in the morning, about 6:00 o'clock in the
20 morning, and nobody was out. So we just went ahead and got
21 on 85 and went towards Florida.

22 Q Did you make it to Florida?

23 A We did.

24 Q How long did you stay?

25 A We stayed long enough to bring in the new year and

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 visit with his family for three or four hours.

2 Q What made you decide to leave?

3 A His family did not agree to house us like Antwon had
4 said that they would.

5 We had six people and Nikki and D. J.'s pit bull in
6 the car. So that was quite a heavy load for, you know, us
7 to just stop and expect them to house us.

8 So they, they pulled together about \$50 and said,
9 well, you can either get a room for the night or you can
10 put gas in your car and get back to South Carolina.

11 So after driving to Saint Petersburg, being there,
12 there and up all night, we put gas in the car and drove
13 back to South Carolina.

14 Q Did you make any stops on the way?

15 A We stopped to get something to eat or put more gas in
16 the car, use the bathroom. But as far as -- we did. We
17 stopped in Atlanta.

18 Q Why did you stop in Atlanta?

19 A D. J. said that he knew some people in Atlanta and
20 that they might could get rid of the guns.

21 Q Did you see the guns at that point any time during the
22 trip?

23 A No, no.

24 Q When did you see the guns again after the crime?

25 A The only time I saw, I saw one of the guns at that

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 point. Antwon had it. And when we got back to South
2 Carolina he, we went to Fairmont. And he gave it to his
3 Uncle Bauley. And his Uncle Bauley said that he would take
4 care of it.

5 Q Did you ever see D. J.'s gun again?

6 A No.

7 Q But he commented about knowing somebody to take it in
8 Atlanta.

9 A He did. But, well, as far as I know, I can't say
10 whether he sold it or not.

11 Q You didn't see any of the transaction.

12 A I didn't see any transactions, and there wasn't any
13 money brought back to the car.

14 Q At any time during this trip who -- or during this
15 trip, who drove your car?

16 A I did.

17 Q Did anybody switch out with you?

18 A Not that I recall, no. I drove the whole way there
19 and the whole way back.

20 There were several -- there was one time on the way
21 back that I stopped at a rest area and was going to let Red
22 drive. And Antwon took the keys and said, no, he didn't
23 trust Red behind the wheel, that every car Red had drove he
24 had wrecked. And so I just kinda laid there and rested my
25 eyes for a little while and proceeded on.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 Q Is that the way it usually was when you -- you did all
2 the driving?

3 A Yes. I was the only one with a license. And,
4 technically, it was my mother's car, so. It was my car,
5 but it was in her name. So I did all the driving.

6 Q When you came back when you stopped in Atlanta, where
7 did you come back to?

8 A We came back to the Duncan area and dropped Nikki and
9 D. J. off at their trailer and dropped Dina off at her
10 grandmother's in Duncan Village, Red at his sister's, which
11 was in Duncan. And then the last person I dropped off was
12 Antwon. He went to Fairmont.

13 Q Was there a conversation in the car either on the way
14 to Florida or on the way back about what everybody was
15 going to do?

16 A There was.

17 Q Let me now ask you this. Did D. J. make any comments
18 about what he was going to do?

19 A He did. He said that he, he knew that they needed to
20 stay out of the area and that he had some family in North
21 Carolina.

22 Q And what did you do, Ms. Lemke?

23 A I went back to my mother's house, and I went on as if
24 I was leading my everyday life. I didn't, I didn't leave
25 the state again. I just stayed in Spartanburg. I was --

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 Q Did you ever, did you ever think to contact the
2 police?

3 A It crossed my mind, yes, but I was convinced by Antwon
4 that I was just as guilty as he was and that if I went and
5 talked to the police that I would be turning myself in.
6 And at this point I had never been in trouble, and I didn't
7 know anything about the law and the police. And so his
8 word is the only one I could go by.

9 Q So you, before being arrested, did you ever go to the
10 police?

11 A No.

12 Q When did you leave the area to go to Columbia?

13 A I, it was several months after that. I went back to
14 Columbia to be with my previous boyfriend who I had met in
15 Job Corps several years before.

16 Q Do you know what happened to D. J. and Nikki?

17 A They went to North Carolina. They kept in, they kept
18 in slight contact with me. I talked to them a few times,
19 two or three times, in between the incident and when I went
20 to Columbia.

21 I think I spoke to them maybe actually when I went to
22 Columbia. I told my boyfriend and his mother that if they
23 called to tell just them that they didn't know where I was.
24 I really, at that point I didn't want contact with anyone.

25 Q Ms. Lemke, you said you hadn't really been in trouble

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 before, but you were convicted in 2003 of failing to return
2 some kind of rental car.

3 A Yes. I had rented a play station game and --

4 Q You don't need to go into the facts. But it was just
5 that was an incident you were charged.

6 A Right. Failure to return rental property.

7 Q Okay. Now, that was your only arrest prior to this.

8 A Yes.

9 Q And you were connected with Antwon in a previous
10 incident, weren't you?

11 A Yes.

12 Q Is that case still pending?

13 A It is.

14 Q So you have charges on this case pending and charges
15 in another case pending.

16 A I do.

17 Q Have you received any consideration for testifying?

18 A Consideration. Is it possible? I have not been
19 promised anything or have agreed to anything. I am
20 testifying on my own behalf just because it is the right
21 thing to do.

22 Q Okay. So you decided to cooperate and testify. Why?

23 A Why? Because it is the right thing to do. We need to
24 bring this to a close.

25 Q How about when you were actually arrested? Were you

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 arrested in Columbia?

2 A Technically, yes.

3 Q Okay. They took you into custody in Columbia and then
4 brought you back to Spartanburg?

5 A Well, I was in Columbia, and detectives Taylor and
6 Bryant came to Columbia and asked me if they could ask me
7 some questions. At that time I was not in custody.

8 Q Okay. They told you what?

9 A Right. They told me that I was not in custody, they
10 just wanted to ask me some questions.

11 At that time they took me to the Richland County
12 Sheriff's Department. I gave several written statements.
13 I spoke them, and Detective Bryant wrote them down for me.

14 After I gave the statements was when the warrant was
15 signed on me. And at that point was when they brought me
16 back to Spartanburg.

17 Q Okay. So did you give a statement about the previous
18 incident with you and Antwon?

19 A I did.

20 Q Okay. And that was when they asked you about it.

21 A Yes.

22 Q And did you then give them a statement about the
23 incident involving Lee Evans? You said you gave several
24 statements. What was the next statement?

25 A I did. Yes, I did. I gave a statement about both

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 incidents.

2 Q Did you give several statements in regards to the Lee
3 Evans' homicide?

4 A After, yes. It was several different days that I had
5 given statements.

6 Q Okay. Did they keep coming back to you and asking you
7 more questions?

8 A They did.

9 Q And did you cooperate each time?

10 A Each time.

11 Q Did you, in fact, go with them to try to find any
12 evidence?

13 A I did.

14 Q Describe those occasions to us.

15 A Once they had brought me back to Spartanburg I was in
16 the Spartanburg County Detention Center.

17 On, for about a week they came on a daily basis. And
18 I rode with them to, we rode to, Sunnyglen and through
19 Fairmont. And we rode past Nikki and D. J.'s trailer and
20 where, just different places where things had occurred.

21 We rode through Duncan Village. And I told them who
22 lived in each apartment and those sort of things.

23 Q Did you point out any areas where some items may have
24 been thrown out?

25 A I did.

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 Q What kind of items? First off, was anything thrown
2 out of the car or disposed of soon after the crime?

3 A Yes. D. J. had gone into the woods behind Duncan
4 Village and put the clothes and boots that he had been
5 wearing that night in the woods behind Duncan Village.

6 Q Okay. And was there any attempt made to find the cell
7 phone?

8 A From what I understand, there was an attempt made to
9 find the cell phone, but it was never recovered.

10 Q Did you participate in that? Did you show them an
11 area?

12 A I did.

13 Q Where you believed it was thrown?

14 A I did.

15 Q Ms. Lemke, what were you doing hanging around Antwon
16 Salters?

17 MR. ROBINSON: I'm going to object, Your Honor.
18 Relevance.

19 THE COURT: Sustained.

20 Q Why were you with Antwon Salters and David Lynch the
21 night this occurred?

22 A I was friends with Antwon through Christina to start
23 with and continued to be friends with him afterwards.

24 As far as D. J., at the time I considered him my
25 friend, but really I just, I was with him because Nikki was

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 my friend.

2 Q What was the understanding when you left D. J. and
3 Nikki's about what was going to happen?

4 MR. ROBINSON: Objection, Your Honor. Asked and
5 answered.

6 THE COURT: Well, let me see y'all just a minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Sustained.

10 Q Ms. Lemke, you told us you remained in contact with D.
11 J. and Nikki after they left the state.

12 A A few times.

13 Q Did you have any contact when they were brought back
14 to the states?

15 A No. The last contact I had with them was when I was
16 on a pay phone with Prof -- Detective Taylor. And the last
17 time I spoke to Nikki was when she said I got to go, the
18 cops are coming after me.

19 Q All right. So you actually cooperated in trying to
20 help apprehend them.

21 A I did.

22 MR. ROBINSON: I'm going, I'm going to object to
23 leading, Your Honor.

24 THE COURT: Don't lead.

25 Q What was that phone call about?

Margaret Alicia Lemke
Direct examination by Mr. Bulsa

1 A The two detectives wanted, asked me if I could talk
2 them into --

3 MR. ROBINSON: I'm going to object, Your Honor.
4 Hearsay and relevance.

5 THE COURT: Well, let me see you again.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 Q I'll move on from that, Ms. Lemke.

9 Did you cooperate with the police?

10 A Completely.

11 Q Have you been cooperating with the --

12 MR. ROBINSON: Objection, Your Honor. Asked and
13 answered.

14 THE COURT: Overruled.

15 Q Have you been cooperating with the prosecution?

16 A Who is the prosecution?

17 Q The state, the lawyers.

18 A Yes.

19 Q Have you been promised anything to do that?

20 A I have not.

21 Q Even though you have pending charges.

22 A Right.

23 Q Thank you, Ms. Lemke. Answer Mr. Robinson's
24 questions.

25 MR. ROBINSON: May I approach the bench, Your Honor?

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 MR. ROBINSON: May it please the Court.

4 THE COURT: Mr. Robinson.

5 CROSS-EXAMINATION

6 BY MR. ROBINSON

7 Q Ms. Lemke, I want to kind of go through the, just
8 some.

9 You would agree that Antwon Salters shot Lee Evans.
10 You would agree with that, wouldn't you?

11 A He did confess to me that he had shot Lee Evans.

12 Q You'd also agree -- did he also confess to you that he
13 shot Mr. Leon Young, or shot at Mr. Leon Young, correct?

14 A He said that he had shot at him.

15 Q Now, you also, you also said that Antwon Salters threw
16 the cell phone out the window, isn't that correct?

17 A I did.

18 Q Okay. Now, do you recall giving some statements to
19 officer -- the officers in this case regarding what
20 happened?

21 A I did.

22 MR. ROBINSON: Approach the witness, Your Honor.

23 THE COURT: Yes, sir.

24 Q Ms. Lemke, do you recognize this statement?

25 A I do.

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 Q And that was given in your handwriting and that's your
2 signature.

3 A That is my signature. It is Officer Bryant's
4 handwriting.

5 Q All right.

6 MR. ROBINSON: I'll get this marked for identification
7 purposes only.

8 Q Ms. Lemke, do you also recognize --

9 THE COURT: Wait a minute. Let her mark it.

10 MR. ROBINSON: I'm sorry.

11 (Letters marked Defendant's Exhibits Nos. 16 and 17 for
12 Identification.)

13 Q Ms. Lemke, when you gave your voluntary statements to
14 the police, you did so to make sure you told the truth,
15 isn't that correct?

16 A At the point that I gave my first statements I was in
17 the mind frame that I wanted to make myself sound more
18 innocent than I was.

19 Q Okay. So what are you today? Are you, are you
20 telling this jury that you --

21 A I --

22 Q Let me finish my question.

23 Okay. Are you telling this jury that you, you do some
24 statements to do some things and other statements to do
25 other things? Is that what you're saying?

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 A No. Those statements were true.

2 Q Okay.

3 A There were certain things that might have been left
4 out of them, but today at this point everything is, has
5 been said is true and everything. Nothing has been left
6 out. Everything is everything.

7 Q Everything is everything. All right, all right. And
8 let me let you. You've identified this as Defense Exhibit
9 1 for identification purposes only. Why don't you read?
10 Why don't you read to the jury what you say on lines --

11 MR. BULSA: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q I want you to read this statement. I want you to look
14 at this statement. That's your statement.

15 Didn't you say in that statement that you actually
16 went over to Sunnyglen to buy drugs, to buy marijuana?

17 A That is what it says.

18 Q Okay. And you don't mention anything in there about
19 going over there to rob anybody, do you?

20 A Right.

21 THE COURT: Let me see y'all just a minute.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 Q Let me say this again to make sure we get this out.

25 You told the police in Columbia or wherever you were

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 in your first statement, which has been marked for
2 identification purposes only, you told them you were going
3 to Sunnyglen to get some, some smoke.

4 MR. BULSA: Objection, Your Honor.

5 THE COURT: Sustained. That statement is not in
6 evidence.

7 Q Now, you didn't mention in any of your statements at
8 all about any sort of robbery or any sort of plan to go and
9 do a robbery or anything, did you?

10 A At that point, no.

11 Q You didn't. Okay. So what you're asking this jury to
12 do is to, is put aside that you never mentioned it before
13 about any sort of robbery in this case and to believe you
14 today. Is that what you're asking the jury to do?

15 A Yes.

16 Q Okay. And you also -- I think Mr. Bulsa had to go in
17 and quiz you about this. But you told Mr. Bulsa on direct
18 examination that you didn't have any prior record at all,
19 any sort of prior problems. And then when he asked you
20 another question about it, you admitted that you had a
21 prior record that had something to do with some sort of
22 not, something not being returned, correct?

23 A Right.

24 Q Okay. Now, you also at this time, you have a pending
25 burglary, burglary case in this court, correct?

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

- 1 A I do have a pending case.
- 2 Q Okay. And that's a burglary first case, isn't it?
- 3 A It is.
- 4 Q And that is a burglary first case in which, in which
- 5 you and Antwon Salters allegedly --
- 6 MR. BULSA: Objection, Your Honor.
- 7 THE COURT: Sustained.
- 8 Q Now, you understand. Do you understand what burglary
- 9 first carries?
- 10 A I do at this point, yes.
- 11 Q It carries 15 years to life, doesn't it?
- 12 A It does.
- 13 Q Okay. And you also, you've also been charged in this
- 14 case with accessory after the fact. Isn't that true?
- 15 A That is true.
- 16 Q And that carries up to 15 years, doesn't it?
- 17 A It does.
- 18 Q Okay. Now, you didn't mention anything in any of your
- 19 statements regarding any sort of bag that D. J. had, did
- 20 you?
- 21 A No. I don't think so.
- 22 Q Do you want to look at the statement to refresh your
- 23 memory? You're looking at what's been marked Defense
- 24 Exhibit --
- 25 A Sixteen.

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 Q -- 16 for Identification purposes only.

2 MR. BULSA: Your Honor, may we approach?

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 MR. ROBINSON: One second, Your Honor.

6 (Pause.)

7 MR. ROBINSON: Your Honor, I have something to discuss
8 outside the presence of the jury. Can I approach, Your
9 Honor?

10 THE COURT: Yes.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 Q Ms. Lemke, do you recall giving another, a third,
14 statement to the police that was transcribed, actually
15 printed out by the police?

16 A I think that all of my, my, my statements were typed
17 out.

18 Q In your third statement you didn't say that you
19 gave -- this would have been on or about October the
20 14th of 2005. Do you recall that statement?

21 A Would it be allowed for me to look at it?

22 Q Yeah.

23 MR. ROBINSON: Can I approach the witness, Your Honor?

24 THE COURT: Yes.

25 A Yes. I remember this.

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 Q Okay. And you didn't say anything in this statement
2 that you gave about any sort of bag, did you?

3 A Not that I recall, no.

4 Q Now, you would agree that everyone that night was
5 scared of Antwon. Weren't they?

6 A You could say that, yes.

7 Q Well, okay. I can say that. Tell me why, why. When
8 you say that, what do you mean, they were scared of Antwon?

9 A Antwon was the ring leader of the group. He had been
10 known to have some violent tendencies.

11 Q Violent tendencies like what?

12 A Violent tendencies. We had heard stories of --

13 MR. BULSA: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q Just go into what you personally know.

16 A What I personally know.

17 Q Uh-huh.

18 A As far as what I personally know, I can only say the
19 stories that I've heard about him. Up until this date and
20 the previous date that I have a pending charge on, I had
21 never particularly seen him be violent. But everyone had
22 that underlying thought that, yes, we know he can be
23 violent.

24 Q Now, you would agree, you had an opportunity to
25 observe David at this time, didn't you?

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 A I had.

2 Q Okay. And you would agree he was very quiet. Wasn't
3 he?

4 A He was quiet during this time, yes.

5 Q And did he appear to be scared?

6 A Scared? I wouldn't go as far as scared, because he
7 also, I had heard stories of having violent tendencies.
8 Same answer.

9 Q But, again, you have no personal knowledge of anything
10 like that, do you?

11 A No. I can only go by what I heard.

12 Q Okay. Now, since you were arrested you have been
13 cooperating pretty regularly with the police in this case,
14 haven't you?

15 A I have.

16 Q And you've been meeting with the solicitor's office in
17 this case as well, haven't you?

18 A I have.

19 Q And you've met with them for how many times?

20 A Several times.

21 Q Several times preparing for this trial?

22 A Well, yes, preparing for the trial.

23 Q Is that true? And they have, they have talked to you
24 about this case, is that true?

25 A They have talked to me as far as I think that they

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 legally can, I mean.

2 Q Talked to you about your testimony?

3 A They just told me that they wanted my truthful and
4 honest testimony. That's all they've told me to tell.

5 Q And you met them at least twice, is that correct?

6 A At least twice, yes.

7 Q And did you meet with Ms. Ganss and Mr. Bulsa?

8 A Yes.

9 MR. ROBINSON: Beg the Court's indulgence.

10 (Pause.)

11 Q Didn't you and Antwon hang out together after you came
12 back?

13 A Came back from?

14 Q Came back from when you said you left the area after
15 this occurred, after this incident occurred, and you came
16 back.

17 A Right.

18 Q Did y'all hang out together after that time?

19 A I had seen him a few times.

20 Q Did you participate in any sort of crimes with him at
21 all?

22 A No.

23 Q You didn't?

24 A No.

25 (Bench conference held off the record in the presence

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 of the jury but out of the hearing of the jury.)

2 Q Ms. Lemke, isn't it true that you and Antwon Salters
3 participated in a burglary together?

4 A That was before this.

5 Q But you would agree that you and Antwon Salters
6 participated in a burglary together, correct?

7 A Yes.

8 Q And that's what your pending charge is today. You
9 have a pending charge right now concerning that case, don't
10 you?

11 A I do.

12 Q Okay. And you didn't advise, you didn't advise the
13 prosecutor about that on direct examination as far as your,
14 this, your relationship with Mr. Salters regarding this
15 particular case, did you?

16 A Can you ask me that again?

17 Q Okay. You didn't, you didn't advise the prosecutor on
18 direct examination about this relationship you had with
19 Mr. Salters prior to this incident, did you?

20 A As far as a crime we had committed?

21 Q Yes, yes.

22 A Or being friends with him or --

23 Q Yes. You didn't mention about this crime that you and
24 he had committed.

25 A I didn't think it was necessary. He, I thought he,

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 already knew.

2 Q Okay. Now, David didn't know this Mr. Lee Evans, did
3 he?

4 A No.

5 Q Okay. Now, Antwon knew Lee Evans, didn't he?

6 A He knew of him.

7 Q Now, tell me who Martena Parks is.

8 A Markita Parks?

9 Q Martena Parks.

10 A Martena Parks.

11 Q Yes.

12 A She is at, she at the time was 14, and she was

13 Antwon's girlfriend. She's --

14 Q Antwon's girlfriend.

15 A Yes. She is Nikki's cousin.

16 Q And she was also Lee's girl as well, wasn't she?

17 A I can't say. I don't know that. I did not know Lee.

18 So I had never seen them together.

19 Q And I think Mr. Bulsa asked you this in the beginning.

20 You never saw anything take place, did you, because you

21 were behind some trees, weren't you?

22 A Right.

23 Q So the information you are getting is second hand,

24 isn't it?

25 A Right. I was told what happened at the car.

Margaret Alicia Lemke
Cross-examination by Mr. Robinson

1 Q Exactly. You weren't there. You didn't see anything,
2 did you, as far as what happened?

3 A No. I could not see it.

4 Q Now, you said a few moments ago that regarding the
5 pending charges that you have, which are the burglary first
6 and the accessory after the fact, that you're not expecting
7 anything from your testimony? Is that what you just said?

8 A I'm not expecting a thing. I'm here just, just to
9 give my honest testimony.

10 Q And the fact that you're looking at 15 years to life
11 for burglary first and up to 15 years in accessory after
12 the fact has not -- comes into play not at all.

13 A It upsets me greatly, yes, because I have found a
14 person in Columbia that I want to be with, and I'm actually
15 pregnant now. So, yes, it upsets me. But, no, I have not
16 been agreed or told that anything would come of this. I
17 have not been promised anything.

18 Q But you're hoping that you get some preferential
19 treatment, aren't you?

20 A I hope that this is taken into consideration that I
21 have cooperated but --

22 Q And you've actually met with the solicitors at least
23 twice, correct?

24 A Yes.

25 Q And you met with them probably the last, last week

Margaret Alicia Lemke
Redirect examination by Mr. Bulsa

1 didn't you?

2 A I have.

3 Q You have. And you went over your testimony, didn't
4 you?

5 A Very briefly. We didn't meet for very long.

6 Q But you met right before this trial, didn't you?

7 A We did.

8 Q If you don't testify the right way in this case do you
9 believe that will impact what kind of treatment you get?

10 A No. I think that I'm going to get the same treatment
11 either way.

12 Q You think so.

13 A I do.

14 Q And you've given three different -- three statements
15 previously to the police, isn't that correct?

16 A I have.

17 Q Okay. And in none of these statements do you ever
18 mention anything about a bag. Do you?

19 A No. I don't.

20 Q That's all I have. Thank you.

21 MR. BULSA: Do you want me to continue on?

22 REDIRECT EXAMINATION

23 BY MR. BULSA

24 Q Ms. Lemke, in those statements however you do tell the
25 police about this robbery plan.

Margaret Alicia Lemke
Redirect examination by Mr. Bulsa

- 1 A Yes.
- 2 Q Right?
- 3 A Yes.
- 4 Q And you did tell the police about Mr. Lynch having the
5 guns, right?
- 6 A I did.
- 7 Q And you did tell the police about Mr. Lynch giving one
8 of those guns to Mr. Salters.
- 9 A I did.
- 10 Q And you did tell them about leaving in the car
11 together to go get Lee.
- 12 A I did.
- 13 Q Mr. Robinson says you didn't see anything. Didn't you
14 see Mr. Lynch with a gun?
- 15 A At the beginning of this, this time, yes, I did.
- 16 Q And did you see Mr. Lynch give the gun to Mr. Salters?
- 17 A I did.
- 18 Q Did you drive them to this location?
- 19 A I did.
- 20 Q Did you see them leave together?
- 21 A Yes, sir. They got out of the car together.
- 22 Q And you heard gunshots.
- 23 A I did.
- 24 Q And you saw them run back together.
- 25 A I did.

Margaret Alicia Lemke
Redirect examination by Mr. Bulsa

1 Q And they discussed it together.

2 A They did.

3 Q And y'all fled to Florida together.

4 A We did.

5 Q And Mr. Lynch wanted you to stop in Atlanta --

6 A He did.

7 Q -- to try to get rid of the gun. Did anybody tell you
8 what to say?

9 A As far as today in court?

10 Q Yes, ma'am.

11 A No. I was told to give my honest testimony, and that
12 is all.

13 Q Thank you, Ms. Lemke.

14 MR. BULSA: That's all I have.

15 MR. ROBINSON: No recross.

16 THE COURT: You may step down.

17 Ladies and gentlemen, we're going to break for lunch.

18 Keep in mind the caution. Do not discuss the case in
19 any fashion. Don't allow yourselves to be exposed to any
20 type of conversations about the case or any media coverage
21 that relates to the case.

22 Do have a good lunch. Please report back to your jury
23 room at 2:30 this afternoon, at 2:30 this afternoon.

24 (The following takes place outside the presence of the
25 jury.)

Kelly Oliver
Direct examination by Mr. Bulsa

1 THE COURT: All right. Court is in recess until 2:30.

2 (Whereupon, a recess was taken.)

3 THE COURT: All right. Are we ready for the jury?

4 MR. BULSA: Yes, sir.

5 MR. ROBINSON: The defense is ready.

6 THE COURT: Okay. Bring them in.

7 Who is the next witness?

8 MR. BULSA: Kelly Oliver.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good afternoon, ladies and gentlemen.

12 We're going to continue with the state's presentation
13 of evidence this afternoon.

14 Mr. Bulsa.

15 MR. BULSA: The state calls Kelly Oliver.

16 KELLY OLIVER, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BULSA.

19 Q Good afternoon, Ms. Oliver.

20 A Good afternoon.

21 Q Would you introduce yourself to the jury, please?

22 A My name is Kelly Oliver. I live at [REDACTED] West Road,
23 Moore, South Carolina.

24 Q And how old are you, ma'am?

25 A Thirty-three years old, sir.

Kelly Oliver
Direct examination by Mr. Bulsa

- 1 Q Do you know the defendant?
- 2 A Yes, sir, I do.
- 3 Q How do you know Mr. Lynch?
- 4 A I know him by D. J. McDowell.
- 5 Q McDowell. Okay.
- 6 A But his girlfriend and hisself used to live in my
- 7 house. They were my roommates.
- 8 Q And do you recall when that was?
- 9 A I guess they moved in my house about 2003, I would
- 10 suppose. It's been awhile back -- 2000.
- 11 Q How long?
- 12 A Sir?
- 13 Q How long did they stay with you?
- 14 A For about a year, eight months to a year.
- 15 Q Okay. Do you recall them living in your house shortly
- 16 before December of 2004?
- 17 A Yes, sir, I do. I threw them out about October,
- 18 November.
- 19 Q Okay. Did you ever see any possession -- any guns in
- 20 the possession of Mr. McDowell that you know of?
- 21 A In my house, no, sir. In his home, yes, sir.
- 22 Q What kind of guns did you see?
- 23 A He had a .380 and a 9mm underneath the bed in his
- 24 bedroom.
- 25 Q Did you have any contact with him? Let me ask you

Kelly Oliver
Direct examination by Mr. Bulsa

1 this. Do you know Lee Evans?

2 A No, sir. I did not know Lee Evans. I knew who he
3 was, but I didn't know him.

4 Q Did you learn about his death?

5 A Yes, sir. It was all over the news.

6 Q Okay. And shortly after that did you see Mr. -- or D.
7 J.?

8 A I saw D. J. at the store, yes, sir, but --

9 Q About how long afterwards?

10 A I don't know. It was a couple. It was after
11 Christmas. January or so. He was at the gas station
12 and --

13 Q Did he say anything to you about it?

14 A Yes, sir, he did. And I asked him where he was going
15 in such a hurry. They were putting gas in the car. And he
16 stated to me that he had to leave town, that a few exponent
17 words, that crap was getting deep. And I said, well, what
18 was going on. And he said, well, we popped that little
19 nigger.

20 Q He said we?

21 A He said, he said. I do believe the exact words he
22 used is, "I popped that little, that nigger, Little E."

23 Q Did he say anybody, did he say if anybody was with
24 him?

25 A He didn't tell me that anybody was with him. He said

Kelly Oliver
Direct examination by Mr. Bulsa

1 that, well, I don't, I don't think he did, not, not to my
2 recollection. I don't remember if he said he or we.

3 Q Did you give a statement to the police?

4 A Yes, sir, I did.

5 Q If you read a portion of that, would that refresh your
6 memory?

7 A Yes, sir, probably so.

8 Q Okay. The last few lines of that.

9 A Thank you, sir.

10 (Pause.)

11 A Yes, sir. I do.

12 Q Does that help you remember?

13 A Yes, sir.

14 Q Okay. So now do you remember --

15 A Yes, sir I do.

16 Q -- what his words were?

17 A Yes, sir.

18 Q What were they?

19 A He said that he and Twon, meaning Antwon-Salters, who
20 he always hung out and frequently visited my home with, had
21 shot him. Actually words were used, popped.

22 Q Popped Little E.

23 A Yes, sir.

24 Q Did you take Little E to be Lee Evans?

25 A Yes, sir.

Kelly Oliver
Cross-examination by Mr. Robinson

1 Q Thank you, ma'am. Answer any questions Mr. Robinson
2 may have.

3 A Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON

6 Q Ms. Oliver, you've met with the solicitor's office a
7 couple of times, at least a couple of times before this,
8 before this trial today, haven't you?

9 A Yes, sir.

10 Q Now, you've also, you also have, have been convicted
11 of, back in July of 2000 of failing to return rental items,
12 is that correct?

13 A Actually, I was convicted of it, but my boyfriend at
14 the time had rented the movies and signed my name to it.
15 Yes, sir, I was.

16 Q Okay. All right.

17 A And I paid the charges.

18 Q Okay. All right. Okay. Your boyfriend at the time?

19 A Yes, sir.

20 Q Okay. Now, in your statement, now, you don't recall
21 when this conversation as far as the date and time, do you,
22 as far as --

23 A No, sir. It was, it was in afternoon, mid afternoon,
24 I do believe.

25 Q But you don't know what the date was, or the time.

Kelly Oliver
Cross-examination by Mr. Robinson

1 A No, I don't know what the date was. It was around
2 January the 1st or so.

3 Q But you're not sure, are you?

4 A No, sir. I can't swear to the exact date.

5 Q Okay.

6 MR. ROBINSON: One second, Your Honor. Beg the
7 Court's indulgence.

8 (Pause.)

9 Q Okay. Now, you were friends with Nikki Holmes,
10 weren't you?

11 A Jessica Nicole Holmes, yes, sir.

12 Q Jessica Nicole Holmes. All right. And when she lived
13 at your house --

14 A Yes, sir.

15 Q -- she lived there with Dave, isn't that correct?

16 A D. J. as I knew him, yes, sir.

17 Q Okay. And you had a falling out with Ms. Holmes,
18 didn't you?

19 A Yes, sir, I did.

20 Q And that, and okay.

21 MR. ROBINSON: That's all I have for this witness,
22 Your Honor. Thank you.

23 MR. BULSA: We have nothing further.

24 THE COURT: You may step down.

25 MR. BULSA: We ask that she be excused.

Jason Bryant
Direct examination by Mr. Bulsa

1 THE WITNESS: Thank you.

2 THE COURT: She may be.

3 MR. ROBINSON: No objection.

4 (Whereupon, the witness was excused.)

5 MR. BULSA: The state calls Jason Bryant.

6 JASON BRYANT, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BULSA

9 Q Please introduce yourself to the jury.

10 A My name is Jason Bryant.

11 Q Who are you employed with?

12 A The Spartanburg County Sheriff's Office.

13 Q What capacity?

14 A I'm a violent crimes investigator.

15 Q How long have you been an investigator?

16 A For about three years.

17 Q How long have you been a police officer?

18 A For about ten years, over ten years.

19 Q All of it with Spartanburg County?

20 A Over ten years.

21 Q Did you get involved in the investigation of this
22 case?

23 A I certainly did.

24 Q When did you begin your involvement?

25 A I was notified the next morning after the date of the

Jason Bryant
Direct examination by Mr. Bulsa

1 original incident. I believe it was on 12/31 of '04.

2 Q Okay. Why is it that you weren't called out to the
3 scene?

4 A We had so many officers that were already at the
5 scene, and I was kept on reserve in case something else bad
6 happened.

7 Q So what was your role to be in this case?

8 A I picked up the next morning and assisted with the
9 neighborhood canvasses and such as that.

10 Q This investigation went on for some time, did it not?

11 A That's correct, yes, sir.

12 Q Do you recall when the first arrest was made?

13 A The first arrest was Margaret Alicia Lemke, and it was
14 around March the 30th.

15 Q 2005?

16 A Yes, sir.

17 Q Three months after the shooting?

18 A Yes, sir. That's correct.

19 Q Where did you find Ms. Lemke?

20 A We found her in Columbia, South Carolina.

21 Q And tell us if you would what took place when you
22 located her.

23 A We located her through information that was received
24 through the department of motor vehicles.

25 We also ran what they call a leads-on-line which

Jason Bryant
Direct examination by Mr. Bulsa

1 showed that she had actually pawned property in Richland
2 County. And from that we were able to pull a booking
3 packet of her exboyfriend at the time. And then from that
4 we were able to run a detail of him due to the fact that he
5 had had relatives that lived in Columbia. And from that
6 it's a, for lack of a better word it's a, credit header.

7 Once we were able to do that we were able to find the
8 address which led us to an apartment in Richland County.

9 Q And so y'all went to Columbia to try to find her.

10 A Yes, sir.

11 Q And it just so happens while you were there somebody
12 called you that she was in another pawn shop, is that
13 right?

14 A That's -- we had originally went to the pawn shop
15 where she had pawned a piece of jewelry.

16 While we were or right after we had left, we had went
17 and grabbed a bite to eat for lunch. And then we had, of
18 course, left our number with the pawn shop manager. And he
19 had called us and stated that the girl y'all were just
20 looking for, she's in the store right now. So we, we went
21 back to the store.

22 Q So is that where you met her?

23 A Yes, sir.

24 Q And then what did you do?

25 A We asked her. We told her we would like to speak with

Jason Bryant
Direct examination by Mr. Bulsa

1 her and asked her if she'd follow us to the Richland County
2 Sheriff's Office.

3 Q And did you speak to her there?

4 A We did.

5 Q And she gave the statements that she's testified
6 about?

7 A That's correct.

8 Q And you were present when those were taken?

9 A Yes, sir.

10 Q Was she then placed under arrest?

11 A She was.

12 Q Was she cooperative in the investigation?

13 A Extremely.

14 Q Did she describe a robbery?

15 MR. ROBINSON: I'm going to, I'm going to object, Your
16 Honor. Hearsay.

17 THE COURT: Sustained.

18 MR. BULSA: Your Honor, may we approach?

19 THE COURT: Yeah.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 Q Detective, we're not going to go into detail, but in
23 your conversations with Ms. Lemke, and I believe in
24 actually one of the statements, did she not tell the police
25 that this was about a robbery?

Jason Bryant
Direct examination by Mr. Bulsa

1 A That's correct.

2 Q Now, as part of the investigation did you identify
3 Mr. Lynch or McDowell as a suspect?

4 A We did, sir.

5 Q Okay. And where was he found?

6 MR. ROBINSON: I'm going to, I'm going to object, Your
7 Honor. Relevance.

8 THE COURT: Overruled.

9 A What, what we had to do to find Mr. McDowell --

10 Q Just tell us where he was found.

11 A Laurinburg, North Carolina.

12 Q Okay. And what did you do when you found out he was
13 there?

14 A At that time we alerted the jurisdictional agency, and
15 then he was apprehended, along with Jessica Nicole Holmes.

16 Q And was he brought back to the sheriff's office?

17 A I'm sorry, sir?

18 Q Was he brought back to Spartanburg County?

19 A Not then. We had responded to Laurinburg, North
20 Carolina, to speak with him.

21 Q Okay. But he was later brought back to Spartanburg
22 County.

23 A Yes, sir.

24 Q And put in the jail.

25 A Eventually, yes, sir.

Jason Bryant
Direct examination by Mr. Bulsa

1 Q Okay. Now, sometime in July did he approach you about
2 wanting to speak to you?

3 A That's correct.

4 Q All right. And did you and Detective Taylor meet with
5 him?

6 A We did.

7 Q And then the day after meeting with him did you pick
8 him up from the jail to have him show you some locations?

9 A Yes, sir, we did.

10 Q And what was the reason for that?

11 A He had, we had picked him up on the 12th. And he was
12 checked out of the Spartanburg County Jail. And he was
13 also trying to show us where the cell phone and the ring
14 that he had described to us, which he described it as a
15 class style ring, was found around the 290 and Fairmont
16 area.

17 All that he basically could remember was that you
18 turned beside the Clock on 290 and going down towards
19 Fairmont, he described it as the cut in Fairmont, I believe
20 were his exact words.

21 Q So he, did he say that the ring and the cell phone had
22 been thrown out at the same location?

23 A That's correct.

24 Q Okay. Was that conversation during the ride?

25 A Yes, sir.

Jason Bryant
Direct examination by Mr. Bulsa

1 Q Did he say why they were thrown out?

2 A They were just trying to get rid of the property.

3 Q Okay. Did he show you any other areas?

4 A He did.

5 Q Where?

6 A He showed us the Foster Street area where some
7 evidence had already been recovered.

8 Q And what was that?

9 A That was the clothing, several or a couple of the
10 toboggan style skully caps, and I believe a pair of boots
11 and a green jacket.

12 Q Okay. And who had showed you that area in order to
13 locate evidence?

14 A Ms. Lemke had shown us that area. And if I recall
15 correctly, even another, another individual involved had.

16 Q Did you actually go to that location?

17 A I'm sorry, sir?

18 Q Did you go to that location when the items were
19 recovered?

20 A Off of Foster Street, yes, sir.

21 Q If I showed you some photographs could you identify
22 the objects?

23 A Yes, sir.

24 (Photographs marked State's Exhibits Nos. 33 through 38
25 for Identification.)

Jason Bryant
Direct examination by Mr. Bulsa

1 Q Detective, let me show you a series of photographs,
2 State's Exhibits 33 through 38. Would you look at those
3 and see if you recognize what those portray?

4 A Yes, sir. The first one is --

5 Q Just look through them first.

6 A Okay. Sure.

7 Q Okay. Do those accurately depict that location and
8 what was found?

9 A Yes, sir.

10 MR. BULSA: Your Honor, I would offer these into
11 evidence.

12 MR. ROBINSON: May I approach, Your Honor?

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 Q Detective, were you present when all of these items
16 were recovered?

17 A I cannot recall.

18 Q Okay. Do you know if you were present when any of
19 them were recovered?

20 A I can't recall. I believe Investigator Bogan had
21 recovered the items.

22 Q Okay. So Ms. Lemke showed you the area and you sent
23 other officers out to search it.

24 A That's correct. Myself and Investigator Taylor had
25 walked down, but I can't recall if we were there when

Jason Bryant
Cross-examination by Mr. Robinson

1 Investigator Bogan had recovered the items.

2 Q Okay. How can you be certain that Mr. Lynch showed
3 you the same area that Ms. Lemke showed you?

4 A He was riding in the back seat of our car and directed
5 us to the area.

6 Q So you had also taken Ms. Lemke?

7 A That's correct.

8 Q So you were present during both of those trips.

9 A That's correct.

10 Q All right. At this point answer any questions Mr.
11 Robinson may have.

12 MR. ROBINSON: May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. ROBINSON

15 Q Officer Bryant, Ms. Lemke -- you've been in the
16 courtroom the entire time, right, while she was testifying,
17 is that correct?

18 A Yes, sir, that's correct.

19 Q And you would agree that she gave a total of three
20 statements, isn't that correct?

21 A At first during her statement I feel that she did
22 minimize her involvement in the first statements that she
23 gave.

24 Q But here is the question. The question was you would
25 agree that she gave three different statements, correct?

Jason Bryant
Cross-examination by Mr. Robinson

- 1 A That's correct.
- 2 Q And you don't have, you really do not have, any idea
- 3 why she did these statements the way she did, do you?
- 4 A Are you asking me?
- 5 Q You personally don't know.
- 6 A Like an opinion question? Is that what you're --
- 7 Q You don't know why she made each statement the way she
- 8 did, correct?
- 9 A Other than what she had advised me.
- 10 Q Okay. But you would agree in the first and second
- 11 statements she never mentioned anything about, anything
- 12 about any sort of a plan or anything of that nature. You
- 13 would agree with that, wouldn't you?
- 14 A If I could see her statement. I don't have a copy of
- 15 her statement up here with me.
- 16 Q Because you were the one that took all of these
- 17 statements, isn't that correct?
- 18 A That's correct. Thank you.
- 19 (Pause.)
- 20 Q Here's the third one.
- 21 A Okay. Thanks. On the audio statement she does
- 22 discuss the robbery.
- 23 Q Okay. But she does not discuss it in any other
- 24 statements though, is that correct?
- 25 A Except for this statement here.

Jason Bryant
Cross-examination by Mr. Robinson

1 Q Okay. So she only mentions it in the last statement,
2 correct?

3 A That's what appears to be correct.

4 Q All right.

5 A I don't see the date on this. I know one was taken
6 3/30. Okay. Yes, sir, that's correct. This is the only
7 statement.

8 Q So the last statement --

9 A Yes, sir.

10 Q -- is where she mentioned anything about this,
11 correct?

12 A Correct.

13 Q Is that right? And you said that you caught up with
14 her down in Columbia at a pawn shop, isn't that right?

15 A That's correct.

16 Q And she was trying to pawn some items, is that right?

17 A I don't know what kind of business she was actually
18 trying to do while we were down there.

19 Q And you said a moment ago she was pawning her
20 boyfriend's property.

21 A No, sir. She was pawning some of her property.

22 Q Some of her property.

23 A Yes, sir.

24 Q Okay. Did that property belong to her?

25 A From what I understood. I didn't recover the

Jason Bryant
Cross-examination by Mr. Robinson

1 property.

2 Q Okay. David never said anything to you about him
3 throwing out the phone at any time, did he, this cell
4 phone, did he?

5 A He had stated that the phone was thrown out but that
6 he did not throw it out, that's correct.

7 Q Okay. I just wanted to make sure.

8 A Yes, sir.

9 Q So when you answered the question on direct
10 examination, you weren't saying that he ever said that he
11 threw the phone out.

12 A No, sir. I believe if I remember correctly he had
13 even stated that Antwon had thrown the phone out.

14 Q Okay. No more questions. Thank you.

15 MR. BULSA: Nothing further.

16 THE COURT: You may step down.

17 MR. BULSA: Your Honor, I would like to recall David
18 Taylor.

19 THE COURT: You have previously been placed under
20 oath, and you are still under the oath for the purpose of
21 these questions.

22 THE WITNESS: Yes, sir, Your Honor.
23
24
25

David Taylor
Direct examination by Mr. Bulsa

1 DAVID TAYLOR, having been
2 previously duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q I show you State's Exhibits 33 through 38 for
5 Identification. Do you recognize those?

6 A I do.

7 Q Were you present when those were taken?

8 A Yes, sir, I do, I was. This is my -- I'm sorry. Go
9 ahead.

10 Q How many days had transpired during the taking of
11 those pictures?

12 A Actually four. It was on the 4th in the night if I
13 recall correctly.

14 This is actually my car parked, excuse me, my car
15 parked right here in front of Randy Bogan's van. The
16 jacket was actually recovered on the 9th if I remember
17 correctly. And the toboggan and shoe was actually on the
18 4th.

19 Q Okay. Were they all recovered in the same general
20 area?

21 A Yes, sir, off of Foster Street in Duncan.

22 Q How did you know to go to that area?

23 A Because of Margaret Limke.

24 Q She pointed it out?

25 A She had pointed this area out, that's correct.

David Taylor
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, I would now move these into
2 evidence.

3 MR. ROBINSON: Without objection.

4 THE COURT: They're admitted.

5 MR. BULSA: Your Honor for the record, that's State's
6 33 through 38.

7 (Photographs marked State's Exhibits Nos. 33 through
8 38.)

9 Q What significantly were you looking for?

10 A Those items that she had described.

11 Q Okay. What kind of items?

12 A Toboggan hat, a shoe, shoes, and actually a jacket.

13 Q Okay. This is the type of area where they were found?

14 A Yes. That's my vehicle, the very front one.

15 Q What part of the street if you recall would they have
16 been located?

17 A I actually think it's out my left door, or I'm sorry,
18 the driver's door.

19 Q Okay. Off to this side.

20 A Yes, sir. I think that driveway right there is the
21 turn-in for Duncan Village Apartments.

22 Q I don't see the driveway. You point to it for us.

23 A I believe that is the driveway for Duncan Village.

24 Q Okay. And who lived at Duncan Village?

25 A That's an area that through the investigation we found

David Taylor
Direct examination by Mr. Bulsa

1 out they went, all the codefendants went, to after the
2 incident.

3 Q Okay. So you went there looking for specific items.

4 A Yes, sir.

5 Q And here's a picture of what?

6 A That's the toboggans that was recovered.

7 Q Okay.

8 MR. BULSA: For the record, that's State's 36.

9 Q State's 38.

10 A That's a shoe that was recovered.

11 Q Okay. State's 37.

12 A That toboggan. It's a blue and a black.

13 Q Okay. State's 34.

14 A That's a jacket that was setting off in the distance
15 there.

16 Q State's 35. What is that?

17 A That's a green jacket.

18 Q Is that a jacket that was shown in the previous
19 picture?

20 A Yes, sir.

21 Q Okay. And not only -- did anyone else point this area
22 out to you?

23 A Yes, sir.

24 Q Who?

25 A Mr. David Lynch-McDowell.

David Taylor
Cross-examination by Mr. Robinson

1 Q And that's all I have. Answer any questions Mr.
2 Robinson has.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON

5 Q Officer Taylor --

6 A Sure.

7 MR. ROBINSON: May it please the Court.

8 Q All of these items that were, that were tossed out of
9 the car, all of those belonged to Antwon Salters, didn't
10 they?

11 A I don't know, sir.

12 Q Did you ever have any -- did you ever go back and
13 discover exactly who they belonged to?

14 A No, sir. I think an attempt was made.

15 Q Okay. So you have no idea whether or not they
16 belonged to Antwon Salters or not, correct?

17 A No, sir, not for sure. I do not, no, sir.

18 Q Okay. But you agree that David Lynch and Margaret
19 Lemke both pointed out where this place was, right?

20 A Yes, sir.

21 Q Is that right? But they didn't say whether or not
22 those belonged to themselves, correct?

23 A I, I will agree with that.

24 Q And, again, you have no idea whether they belonged to
25 Antwon Salters or not.

David Taylor
Cross-examination by Mr. Robinson

1 A I do not know.

2 Q And you can't, you can't, you can't eliminate that
3 from the equation though, can you?

4 A Absolutely not.

5 Q Now, these toboggan hats we're talking about, they
6 don't, they don't go down over your face. They just kind
7 of sit on top of your head, don't they?

8 A That's what I remember, yes.

9 Q Toboggan hats.

10 A That's what I recall.

11 Q You never took the shoe sizes. You said that you --
12 excuse me. You said there was a shoe that was recovered in
13 that --

14 A Yes, sir, that shoe.

15 Q Did you ever -- you never took and had the
16 measurements of that shoe done to compare it with anyone
17 else.

18 A No, sir, I didn't.

19 Q Regarding that toboggan hat, did you ever in your
20 investigation, ever ask anyone who it belonged to or
21 anything like that?

22 A I don't recall, no, sir, not.

23 Q And regarding that garment that was found, what was
24 it, a jacket or something like that?

25 A Yes, sir. That's correct.

David Taylor
Redirect examination by Mr. Bulsa

1 Q Did you in your investigation ever find out or
2 discover who that belonged to?

3 A No, sir.

4 Q Okay. So although they told you, although you had
5 cooperative witnesses, which is what you called David
6 Lynch, I think in the beginning --

7 A Yes, sir.

8 Q -- you don't know who that, who those belonged, who
9 owns that, correct?

10 A No, sir.

11 Q That's all I have. Thank you.

12 MR. BULSA: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. BULSA

15 Q Who supposedly threw those out?

16 A Supposedly David Lynch.

17 Q Okay. Was Antwon Salters cooperative in the
18 beginning?

19 A Antwon Salters cooperative in the beginning?

20 Q Was he cooperative also? He asked you if Mr. Lynch
21 was.

22 A Yes, sir. He was.

23 Q Antwon Salters was cooperative.

24 A Yes, sir.

25 Q Okay. Thank you.

Tyrone Smith
Direct examination by Mr. Bulsa

1 MR. BULSA: That's all I have.

2 THE COURT: Step down.

3 MR. BULSA: The state calls Tyrone Smith.

4 TYRONE SMITH, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Mr. Smith, over here. Okay. Tell us your name.

8 A Tyrone Smith.

9 Q You need to speak up louder than that.

10 A Tyrone Smith.

11 Q How old are you, sir?

12 A Twenty.

13 Q Twenty. Where do you live?

14 A Wofford Street.

15 Q Mr. Smith, back in July of 2005 were you arrested for
16 being in possession of a firearm?

17 A Yes, sir.

18 Q Describe the incident to us, please.

19 A Whatcha mean, like I got pulled over?

20 Q Yes, sir.

21 A Oh, being in the car with a female I just talked to
22 and ran into a roadblock.

23 Q Ran into a roadblock. What happened?

24 A License suspended and searched the car. And they
25 found a pistol under the seat.

Tyrone Smith
Direct examination by Mr. Bulsa

- 1 Q Found a pistol under the seat. Was it under the seat
2 you were sitting in?
- 3 A Yes, sir.
- 4 Q Yes, sir. And what did you -- what happened when they
5 found that pistol?
- 6 A They put me in handcuffs and put me in the back seat.
- 7 Q Were you arrested for being in possession of it?
- 8 A I wasn't in possession of it then. But I don't know.
- 9 Q I'm sorry. Speak up.
- 10 A Say that again, sir.
- 11 Q Were you arrested for possession of a pistol?
- 12 A Yes, sir.
- 13 Q Okay. And where had you found that pistol?
- 14 A Found the pistol in Whispering Pines, sir.
- 15 Q Okay. And describe how you came about having it.
- 16 A One day walking from a friend-girl house through the
17 pass where I go through, when I come there, found it on the
18 passway.
- 19 Q You just found the pistol along the path.
- 20 A In the pathway under these logs, logs.
- 21 Q Was it loaded?
- 22 A Na. It didn't have no bullets in it, no, sir.
- 23 Q Huh?
- 24 A Didn't have no bullets in it, sir.
- 25 Q No bullets. How about when the police got it, was it

Tyrone Smith
Direct examination by Mr. Bulsa

1 loaded?

2 A It was loaded then.

3 Q How did it get loaded?

4 A I had some old. I got some old bullets from --

5 Q What in the world did you pick it up for?

6 A I don't know, sir. I just being, I guess, trying to
7 make some money or sm'n. I just found the gun, sir. I
8 don't have nothing to do with nothing. Like I'm saying, I
9 don't even know these gentlemen who witness. I don't even
10 know nothing there.

11 Q I'm getting there, Mr. Smith.

12 A Okay.

13 Q I want to know why you picked it up.

14 A Like I say, people find guns. People, anybody could
15 do that. You know what I'm saying? You find a gun,
16 somebody might pick it up. Know what I'm saying? I don't
17 know. I was probably trying to make some money.

18 Q Are you telling us there are certain areas in town
19 that people find guns?

20 A Yeah. Around the west side you can find guns. People
21 stay finding guns.

22 Q Now, do you know any one of those men sitting over
23 there at that table?

24 A No, sir.

25 Q Did you know anybody by the name of Lee Evans?

Tyrone Smith
Direct examination by Mr. Bulsa

- 1 A No, sir.
- 2 Q Antwon Salters?
- 3 A No, sir.
- 4 Q Margaret Lemke?
- 5 A No, sir.
- 6 Q Jessica Nicole Holmes?
- 7 A No, sir.
- 8 Q David Weatherspoon?
- 9 A No, sir.
- 10 Q Martena Parks?
- 11 A No, sir.
- 12 Q David Lynch?
- 13 A No, sir.
- 14 Q Roy McDowell?
- 15 A No, sir.
- 16 Q Did the police take that gun from the car?
- 17 A They took it from the car, sir.
- 18 Q Took it and arrested you. Did you ever see it again?
- 19 A Did I see the pistol again?
- 20 Q Yes, sir.
- 21 A No, sir.
- 22 Q Okay. If I showed you the pistol, do you think you
- 23 could tell us if it looked like that one?
- 24 A I mean, it's been a while back. I don't know.
- 25 Q You may or may not recognize it?

Tyrone Smith (In-camera)
Direct examination by Mr. Bulsa

1 A You can show me.

2 MR. ROBINSON: Your Honor, I'm going to object. May
3 we approach the bench?

4 THE COURT: Uh-huh.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: All right. Ladies and gentlemen, I have
8 got one matter I'll need to address outside of your
9 presence.

10 So I'll ask you to please go to the jury room. Don't
11 talk about the case. I'll bring you back in just a few
12 minutes.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: All right. Mr. Bulsa, go ahead and
16 proffer your testimony.

17 MR. BULSA: I guess I need to get this marked for
18 identification.

19 (Pistol marked State's Exhibit No. 39 for
20 Identification.)

21 MR. BULSA: Your Honor for the record, it is, has got
22 a tab through it to make it safe.

23 Q All right. Mr. Smith, I'm going to show you what's
24 State's Exhibit No. 39 for Identification. Do you
25 recognize that pistol?

Tyrone Smith (In-camera)
Direct examination by Mr. Bulsa

- 1 A What is, it's a .380.
- 2 Q Huh?
- 3 A Saying.
- 4 Q Look at it. Does that appear to be the gun that was
- 5 taken from you?
- 6 A It looked similar to this one.
- 7 Q What?
- 8 A I'm not, not for sure, but it looked similar to this
- 9 gun.
- 10 Q Looked similar to that one.
- 11 A It might be if it's a .380.
- 12 Q Huh?
- 13 A I found a .380, sir.
- 14 Q Okay.
- 15 A Look familiar though. It looked like --
- 16 Q What? How did you know it was a .380 when you found
- 17 it?
- 18 A It has got it on it.
- 19 Q Huh?
- 20 A It be there. It's a .380.
- 21 Q I see .380 on the clip.
- 22 A Sir, I'm saying I'm not for sure though.
- 23 Q You're not sure it's the same one, but it's similar to
- 24 this one.
- 25 A Yes, sir.

Tyrone Smith (In-camera)
Cross-examination by Mr. Robinson

1 Q Okay. That's what I wanted to know. Mr. Robinson has
2 some questions.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON

5 Q You don't, you don't know whether that's not the same
6 gun that you found or not, do you?

7 A Say that again, sir.

8 Q You don't know whether that's the same gun you found
9 or not, do you?

10 A Yes, sir.

11 Q What, sir?

12 A Yes, sir.

13 Q What is the answer to the question?

14 A You saying -- say that again. You say I don't know.

15 Q You're not sure if that's the same gun.

16 A Yeah, I'm not sure.

17 Q You're not sure, are you? Okay. And you also
18 testified a few moments ago that lots of guns or many guns
19 get thrown out in the woods around that area, correct? Is
20 that true?

21 A Yes, sir.

22 Q Okay.

23 MR. ROBINSON: That's all I have of this witness, Your
24 Honor.

25 THE COURT: Do you object to the question?

Tyrone Smith
Direct examination by Mr. Bulsa

1 MR. ROBINSON: I'm sorry, Your Honor?

2 THE COURT: Do you object to the question that the
3 state is asking him? That's why we're having this little
4 in-camera hearing.

5 MR. ROBINSON: No. I think I'm going to withdraw it,
6 I think.

7 THE COURT: Okay. Bring the jury back.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Okay. You may continue.

11 MR. BULSA: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. BULSA

14 Q Mr. Smith, I show you what's been marked for
15 identification as State's Exhibit No. 39. Does that look
16 similar to the one that you found?

17 A Yes, sir.

18 Q I'm sorry?

19 A Yes, sir.

20 Q And so that's similar to the one that the police
21 recovered.

22 A Yes, sir.

23 Q How long did you actually have this gun in your
24 possession?

25 A Oh, yeah, and that's what I was trying to tell you

Tyrone Smith
Cross-examination by Mr. Robinson

1 about it, yeah. When I found the gun, sir, I didn't even
2 have the gun on me but five days. Straight up.

3 Q Not even a week, just five days.

4 A Yes, sir.

5 Q Okay. Thank you. Answer any questions Mr. Robinson
6 has.

7 MR. ROBINSON: May it please the Court.

8 THE COURT: Yes.

9 CROSS-EXAMINATION

10 BY MR. ROBINSON

11 Q Tyrone, you don't know if this is the gun that you
12 found or not, do you?

13 A I mean, sir, didn't I say it's similar to it, sir?

14 Q Yeah. But you don't know if that is the exact gun
15 that you picked up out of the woods, right?

16 A Not really for sure, but it's really similar to it
17 though.

18 Q It's similar.

19 A It might can be, might can.

20 Q But you can't be a hundred percent sure that's the
21 right gun, can you?

22 A I can't recall '05. I can't remember that, sir. It's
23 similar to it though.

24 Q Similar. Okay.

25 A It might be because --

Tyrone Smith
Cross-examination by Mr. Robinson

1 Q And you've seen, you've seen lots of guns, haven't
2 you?

3 A Haven't seen lots of guns, no, sir. I ain't lots of
4 guns, but I say, what ya' mean, I seen lots of guns?

5 Q Well, you've seen a lot of guns in your time.

6 A I've seen guns before. Man, I ain't seen lots of
7 guns.

8 Q And you've seen guns before.

9 A Yes, sir.

10 Q And that area that you're talking about, you testified
11 that a lot of guns get found in that area, is that right?

12 A Yeah, guns get found.

13 Q All sorts of guns, right?

14 A You can find a gun, you know, you find a gun.

15 Q I'm sorry. I want to make sure I understand you.

16 A Guns get found, sir.

17 Q Get found.

18 A Yes, sir.

19 Q That's an everyday occurrence, isn't it? Guns get
20 found, right?

21 A Yes, sir.

22 Q When people find guns, what do they usually do with
23 them?

24 A Some people might just keep them. Some people might
25 sell it, try to sell it, or whatever, or just give it away.

Tyrone Smith
Cross-examination by Mr. Robinson

1 Fear.

2 Q In terms of the area as far as where you allegedly
3 found a gun in this case, what area is that in, again, I'm
4 sorry?

5 A Like on the west side of town.

6 Q West side of town. Where on the west side of town is
7 it?

8 A Like Whispering Pines.

9 Q Okay, okay.

10 THE COURT: Say that again.

11 THE WITNESS: Whispering Pines, sir.

12 THE COURT: Western Pines?

13 THE WITNESS: Whispering Pines.

14 Q Where is Western Pines? And it's the west side of
15 town, right?

16 A I think that's the west. Yeah, that's the west.

17 Q The west side of town. But you're not exactly sure
18 where you found this gun, right?

19 A I know I found the gun, sir.

20 Q But it was in the west side of Spartanburg.

21 A No. It was in Whispering Pines, sir.

22 Q Western Pines.

23 A Through pass, sir.

24 Q Western Pines.

25 A Yeah.

Tyrone Smith
Redirect examination by Mr. Bulsa

1 Q Okay. And in your experience lots of guns are found
2 in this area, right?

3 A I mean, guns could get found, sir. Know what I'm
4 saying.

5 Q Why are there so many guns around this area?

6 A I don't know.

7 MR. BULSA: Objection, Your Honor.

8 THE COURT: Sustained.

9 Q That's all the questions I have. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BULSA

12 Q Just briefly. Mr. Smith, are you saying Whispering
13 Pines?

14 A Whispering Pines, Wistering Pines, whatever.

15 Q Whispering Pines?

16 A Whispering Pines, yeah.

17 Q Is that an apartment complex?

18 A Yes, sir.

19 Q Okay.

20 MR. BULSA: That's all I have.

21 THE COURT: Step down.

22 MR. BULSA: Deputy Wilson.

23

24

25

Steve Wilson
Direct examination by Mr. Bulsa

1 STEVE WILSON, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Good afternoon. Deputy, would you please introduce
5 yourself to the jury?

6 A Deputy Steve Wilson.

7 Q Deputy Wilson, you weren't involved in the
8 investigation of a homicide back in December of '04, were
9 you?

10 A No. I was not.

11 Q Did you in July of '05 arrest someone for possession
12 of a pistol, a man by the name of Tyrone Smith?

13 A Yes, I did.

14 Q And when was that?

15 A That was on 7/22 of '05.

16 Q And where was the weapon recovered?

17 A The weapon was recovered underneath the seat of a
18 vehicle that the subject, Mr. Tyrone Smith, was sitting on.

19 Q Okay. And did you take that weapon into custody?

20 A Yes, I did.

21 Q Did you place it into evidence at the sheriff's
22 office?

23 A Yes, I did.

24 Q Did you note it by its serial number?

25 A Yes, sir, I did.

Steve Wilson
Direct examination by Mr. Bulsa

1 Q Let me show you State's Exhibit No. 39 for
2 Identification. Will you look at that weapon and see if
3 that's the one that you recovered?

4 A Yes, sir. It is.

5 Q And how can you tell?

6 A Well, it coincides with what's in my incident report
7 from the time of -- that it's recovered.

8 Q If you would, read what notation you made on your
9 report.

10 A Recovered was a 9mm Remington UMC pistol, Serial No.
11 P-A48064.

12 Q Okay. Now, look at the evidence sheet that
13 accompanied this into evidence. How was it described on
14 that?

15 A It is described also as a Remington pistol .380 UMC,
16 Serial No. P-A48064.

17 Q Okay. And can you describe why you had 9mm on one and
18 .380 on another?

19 A All right. Alls I can say is at the time I took the
20 report and the time writing it and then the time actually
21 put in evidence, I looked close, more closely, at the
22 pistol.

23 Q Okay. So the accurate one would be what's listed on
24 the evidence sheet.

25 A Correct.

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 Q Now, look at that weapon and read off the serial
2 number.

3 A Serial No. is P-A48064.

4 Q Okay. That's a .380 semiautomatic pistol?

5 A Yes, sir.

6 Q Okay. Thank you. That's all I have. Answer any
7 questions Mr. Robinson, the attorney, may have.

8 MR. ROBINSON: I have no questions. Thank you.

9 THE COURT: Step down.

10 MR. BULSA: We ask that Mr. Wilson be excused.

11 THE COURT: He may be.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness was excused.)

14 MR. BULSA: Ken Whitler.

15 KENNETH H. WHITLER, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Please introduce yourself to the jury.

19 A My name is Kenneth H. Whitler. That's spelled

20 W-H-I-T-L-E-R.

21 Q Who are you employed with?

22 A The South Carolina Law Enforcement Division. That's
23 also known as SLED.

24 Q In what capacity?

25 A I am a firearms and toolmark examiner in the forensic

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 services department.

2 Q How long have you had that position?

3 A Since 1997.

4 Q Give us the benefit of your training.

5 A Excuse me?

6 Q Give us the benefit of your training.

7 A Yeah. As a toolmark, firearms and toolmark, examiner
8 you don't go to college to get a degree in it. You have to
9 learn it from other qualified examiners.

10 I underwent an approximately 2-year training period
11 when I was employed by the F. B. I. laboratory and trained
12 with F. B. I. examiners for approximately, like I said, two
13 years.

14 At the end of the training period I was given a series
15 of tests which I passed and was certified by the F. B. I.
16 laboratory as a firearms toolmark examiner.

17 When I retired from the F. B. I. laboratory in 1997 I
18 came to work at SLED doing basically the same job except at
19 the state level.

20 Q Have you testified in court before?

21 A I've testified approximately 150 times in various
22 state and territorial and United States courts.

23 Q Have you been declared an expert in court?

24 A Yes, sir.

25 Q In what expertise?

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 A Firearms and toolmark examination.

2 MR. BULSA: Your Honor, I would offer Agent Whitler as
3 an expert in the area of firearms and toolmark
4 identification.

5 MR. ROBINSON: Without objection.

6 THE COURT: He is so qualified.

7 Q In your position do you receive evidence from various
8 law enforcement agencies?

9 A Yes, I do.

10 Q And is that to identify a possible -- whether they
11 were connected to certain crimes?

12 A Well, my job is to determine if a questioned bullet or
13 cartridge case is submitted and a gun, to determine if that
14 bullet or cartridge case was fired by that particular
15 firearm.

16 If no firearm is submitted, then I try to determine if
17 all of the bullets or all of the cartridge cases were fired
18 by the same firearm or possibly by different firearms.

19 Q Now, this case, in particular, do you have your
20 records relating to the victim being Lee Evans? You do?

21 A Pardon?

22 Q Do you have your records pertaining to this case?

23 A Yes, I do.

24 Q Okay. I show you a series of items. If you would,
25 tell us whether you actually received these for

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 identification, State's Exhibit No. 29.

2 A Yes, I have.

3 Q And State's Exhibit 29 is what?

4 A State's Exhibit 29 are four fired cartridge cases.

5 Q Okay. I believe these are just for identification
6 right now. We will get into that.

7 Now, State's Exhibit No. 30 for Identification. Let
8 me know if you need something to cut those open with.

9 A And I've seen Exhibit 30 before.

10 Q What is it?

11 A It consists of three bullet jacket fragments and one
12 bullet core.

13 Q Okay. State's Exhibit No. 31 for identification.

14 A State's Exhibit 31 are two fired bullets.

15 Q Okay. Did you receive those?

16 A Yes, I did.

17 Q State's Exhibit No. 32 for Identification.

18 A State's Exhibit 32 I received, and it's a fired bullet
19 also.

20 Q Now, in what condition did you receive these packages?

21 A I received them in a sealed container.

22 Q Okay. Do you recall how they would have been sealed?
23 Do they come sealed in these Manila envelopes?

24 A Yes. They did. I resealed them in the heat-sealed
25 bags so that you could tell that they're, if they've been

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 opened since I left them.

2 Q So you get them from law enforcement sealed in these
3 type bags.

4 A Or however they submit them, yes.

5 Q Okay. And then you perform your tests. And then you
6 send them back in the plastic bags.

7 A That's correct.

8 MR. BULSA: Your Honor, I would offer these into
9 evidence.

10 MR. ROBINSON: Without objection.

11 THE COURT: They are admitted.

12 (Shell casings marked State's Exhibit No. 29; bullet
13 fragments marked State's Exhibit No. 30; bullets marked
14 State's Exhibit No. 31; bullets marked State's Exhibit No.
15 32.)

16 MR. BULSA: For the record, that is State's 29, 30, 31
17 and 32.

18 Q Okay. Let me show you what's been marked for
19 identification State's Exhibit No. 39. Did you receive
20 that?

21 A Yes, I did.

22 Q Did you note it by its serial number?

23 A Well, I'm putting my marks on it and put it in a heat
24 sealed bag, but the serial number is P-A48064.

25 Q Your records show that that was the gun you recovered,

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 you received.

2 A That's correct.

3 MR. BULSA: Your Honor, I would offer this weapon into
4 evidence.

5 MR. ROBINSON: I'm going to object based on my
6 previous objections, Your Honor, to this gun.

7 THE COURT: Well, let me see y'all just a minute.

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 THE COURT: All right. The weapon is State's Exhibit
11 39.

12 THE WITNESS: That's correct.

13 THE COURT: Any objection?

14 MR. ROBINSON: No objection.

15 THE COURT: It's admitted.

16 (Pistol marked State's Exhibit No. 39.)

17 Q Agent Whitler, did you conduct tests on all of these
18 items?

19 A Yes, I did.

20 Q Were you able to determine if that weapon fired any of
21 these casings or rounds?

22 A From my examination I was able to determine that this
23 firearm fired all four of the fired cartridge cases, three
24 of the three fired bullets that were submitted and two of
25 the three fired bullet jackets that were submitted.

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 Q The third bullet jacket.

2 A The third bullet jacket and the bullet core didn't
3 have sufficient marks or no marks of value for
4 identification of the firearm.

5 Q So you couldn't match it with any firearm.

6 A That's correct.

7 Q This weapon, could you explain to the jury how rounds
8 or casings are ejected from it?

9 A This firearm is a semiautomatic pistol. The
10 cartridges are placed in this object right here at the top
11 of the bag, which is called the magazine.

12 You put your cartridges in the top of it, and it'll
13 hold a certain number. Then you put the magazine in the
14 grip of the pistol. There's a hole in the bottom of the
15 grip. The magazine goes in in some effect. It would be in
16 the pistol somewhat like this with the cartridge at the
17 top.

18 You pull your slide. This part here is a slide. It
19 will come to the rear. And when it does, there's a spring
20 in there. You let it go forward. And as the slide goes
21 forward, it takes the top cartridge out of the, off the
22 magazine and inserts it in the barrel.

23 You see this part sticking out right here. And this
24 part right in here is the back of the barrel. It takes the
25 cartridge out of the magazine into the barrel, the chamber

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 area and shuts.

2 When you fire it the gas pressure pushes the bullet
3 out the barrel of the firearm at the same time it pushes
4 the slide to the rear.

5 As the slide goes to the rear it pulls the fired
6 cartridge case out of the chamber and throws it out of the
7 firearm through this area here called the ejection port.
8 Basically a hole in the side of the firearm opens up.

9 The cartridge case is thrown out. The slide goes all
10 the way to the rear as far as it can go. And then at this
11 point the spring in there takes over and pulls the slide
12 forward again where it takes the next cartridge in the
13 magazine and puts it in the chamber. And you're ready to
14 fire again.

15 Q Is there any specific direction in which a round or a
16 casing would be ejected?

17 A They're generally ejected in the direction of the
18 ejection port to the right, but where to the right is not,
19 not very, they don't have to be very consistent.

20 Sometimes they'll go directly to the right, and
21 sometimes they spread them all over the place. But they
22 will generally go out the side that the ejection port is
23 pointed obviously.

24 Q Is there any way to determine how far they will eject?

25 A It's, it really determines on the situation. If

Kenneth H. Whitler
Direct examination by Mr. Bulsa

1 there's like carpet or hard surfaces or how the person is
2 holding the pistol, but there's just a number of variables
3 that go into how far it can throw a cartridge case.

4 Q Agent, in this case we know one of these casings was
5 found in the seat of the car.

6 In your expertise can you give us an opinion about how
7 close that gun might have been to eject it into the seat of
8 a car?

9 A Really, I couldn't not knowing. I'd have to know more
10 of the facts.

11 Q Knowing the victim was seated in the car and shot
12 while in the car, does that suggest that someone, a gun was
13 fired into the car?

14 A Not necessarily. It could have been fired in the car
15 and stayed in the car, or it could have been from outside
16 the car and went through an open window or door. So you
17 really couldn't tell.

18 Q Okay. But there's no question that but for one of
19 these jackets every piece of evidence supplied to you was
20 discharged by this weapon.

21 A That's correct.

22 Q Thank you. Answer any questions Mr. Robinson may
23 have.

24 MR. ROBINSON: No questions, Your Honor.

25 THE COURT: You may step down.

Michael Woodcock
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, we'd ask --

2 THE COURT: All right. Ladies and gentlemen, I'm
3 going to ask you to please go to your jury room.

4 Don't talk about the case. I'll bring you back in
5 just a few minutes.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Court's in recess for 15
9 minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Bring the jury in, please,
12 sir.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Mr. Bulsa.

16 MR. BULSA: The state calls Michael Woodcock.

17 MICHAEL WOODCOCK, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BULSA

20 Q Will you please introduce yourself to the jury?

21 A I'm Lieutenant Michael Woodcock of the Spartanburg
22 County Sheriff's Office.

23 Q How long have you been a police officer?

24 A I've been an officer for 18 years.

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

Michael Woodcock
Direct examination by Mr. Bulsa

1 A Five years.

2 Q Who were you with prior to that?

3 A The city of Spartanburg.

4 Q Okay. Lieutenant Woodcock, did you have an occasion
5 on July the 12th of 2005 to speak with an individual by the
6 name of Roy D. McDowell?

7 A Yes, I did.

8 Q Is that the defendant?

9 A Yes, it is.

10 Q Okay. And in meeting with him did you go over his
11 rights with him?

12 A Yes, I did.

13 Q I show you what's been marked State's Exhibit No. 4
14 for Identification. Could you identify that document?

15 A It's a standard Miranda rights waiver that I read to
16 everyone I interview.

17 Q Okay. Is that how you start off your interviews?

18 A Yes.

19 Q Okay. Does that bear the defendant's signature?

20 A Yes, it does.

21 MR. BULSA: And, Your Honor, I would offer this into
22 evidence.

23 MR. ROBINSON: That's without objection, Your Honor.

24 THE COURT: It is admitted.

25 (Rights form marked State's Exhibit No. 4.)

Michael Woodcock
Direct examination by Mr. Bulsa

1 Q If you would, please read to the jury how you read
2 this to Mr. McDowell or Mr. Lynch.

3 A I first advise them I'm going to read them their
4 rights.

5 Then I go ahead, and I say, "Before we ask you any
6 questions you must understand your rights. You have the
7 right to remain silent. Anything you say can and will be
8 used against you in a court of law. You have the right to
9 talk to a lawyer for advise before we ask you any questions
10 and to have him or her present with you during questioning.
11 If you have no money for lawyers' fees, the Court will
12 appoint one to represent you without cost to you if you
13 wish. If you decide to answer questions now without a
14 lawyer present you still have the right to stop answering
15 questions at any time. You also have the right to stop
16 answering questions at any time until you talk to a
17 lawyer."

18 And then I ask them if they understand their rights.
19 And then I go on, and I say, now, the waiver and the need
20 says, "I'm willing to make a statement and answer
21 questions. I do not want a lawyer at this time. I
22 understand and know what I'm doing. No threats or promises
23 have been made to me, and no pressure or coercion of any
24 kind has been used against me."

25 I ask them if that's correct. And if so, I ask them

Michael Woodcock
Direct examination by Mr. Bulsa

1 to sign.

2 Q And he signed it on two spaces.

3 A Yes, he did.

4 Q And you witnessed it.

5 A Yes, I did.

6 Q On 7/12/2005 at 11:41.

7 A That's correct.

8 Q Now, in the course of your interview with the
9 defendant did you ask him a question regarding his
10 knowledge of what was to take place on Sunnyglen Drive?

11 A Yes, I did.

12 Q And if you would, do you recall what specifically you
13 asked him?

14 A I wrote down what I asked him and his reply. I said,
15 "So when you guys got out of the car and approached Evans'
16 car, you pretty much knew you guys were going to rob him.
17 You thought that was going to happen, right?"

18 And he replied, "Basically, but not him though. We
19 were really going to get Shad."

20 And I stated, "But when Shad wasn't around, you guys
21 just kind of just off the cuff, no plan, kind of like there
22 was, he was it, it was an opportunity kind of thing."

23 And he said, "Basically."

24 I said, "Okay."

25 Q Thank you. That's all I have. Answer any questions

Michael Woodcock
Cross-examination by Mr. Robinson

1 Mr. Robinson may have.

2 MR. ROBINSON: May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. ROBINSON

5 Q Officer Woodcock, let me make sure I get this right.

6 He actually said there was no plan, didn't he?

7 A He stated that there was, yes, no plan when it came to
8 trying to get Mr. Evans.

9 Q Okay. And you didn't keep a transcript of this
10 interview, did you?

11 A No. A transcript was not made.

12 Q Okay. And then he also said that he had no idea that
13 Mr. Salters was going to do what he did, didn't he?

14 A Referring to the shooting itself?

15 Q Yes.

16 A No. I believe that's correct.

17 Q And he was very cooperative with you, wasn't he?

18 A Yes, he was.

19 Q This was an interview that lasted how long?

20 A I believe the interview lasted approximately two
21 hours.

22 Q That's all I have. Thank you.

23 MR. BULSA: Briefly.

24

25

Michael Woodcock
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Lieutenant, you're talking about this interview
4 lasting for two hours, and yet we only went into a couple
5 of questions.

6 Did you have a lengthy discussion with him?

7 A Yeah, a very lengthy discussion. He was very
8 talkative and described everything in detail, and what
9 happened at the scene.

10 Q And then you asked him these questions about specific
11 knowledge.

12 A Correct.

13 Q Okay. And while Mr. Robinson said, said there was no
14 plan to get Lee, was there a plan to get someone else?

15 A That's correct. He was -- basically, they were going
16 to get Shad. He was not there.

17 Q Okay. He answered your question about robbery with
18 they meant to rob Shad.

19 A Correct.

20 Q But Lee just happened to be there and he was an
21 opportunity.

22 A Correct.

23 MR. ROBINSON: I'm going to object, Your Honor.
24 Leading.

25 THE COURT: Don't lead him.

Michael Woodcock
Redirect examination by Mr. Bulsa

1 MR. BULSA: All right. That's all I have.

2 Q Thank you.

3 MR. ROBINSON: No recross, Your Honor.

4 THE COURT: You may step down.

5 MR. BULSA: We ask that Lieutenant Woodcock be
6 excused.

7 THE COURT: He may be.

8 (Whereupon, the witness was excused.)

9 MR. BULSA: May we approach, Your Honor?

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 THE COURT: All right. Ladies and gentlemen, the
13 state has one more witness. It's the pathologist. And it
14 was -- you know, you try to arrange your schedule around
15 those who have a busy schedule. We try to arrange it
16 around theirs.

17 He could be here earlier. He can't be here now. He's
18 involved in something that prevents him from being able to
19 attend this afternoon. But he will be available first
20 thing in the morning.

21 So we're going to recess now for the afternoon. We
22 will resume with the last state's last witness at 9:30 in
23 morning.

24 So keep in mind the caution previously given. Don't
25 talk about the case with anybody. Don't allow yourselves

1 to be exposed to any type of media coverage or other
2 discussions about the case. Don't conduct any research or
3 do your own investigation into any issue.

4 Do have a good evening, and please report to your jury
5 room at 9:30 in the morning, 9:30 in the morning. Have a
6 good afternoon.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: Mr. Robinson, if you've not already, I
10 want you to plan to talk with Mr. Lynch during the
11 overnight recess about his right to testify and not
12 testify --

13 MR. ROBINSON: Yes, sir.

14 THE COURT: -- so that I can address that with him in
15 the morning when the state concludes their presentation.

16 MR. ROBINSON: Yes, sir.

17 THE COURT: All right. Court is in recess until
18 9:30 in the morning.

19 END OF PROCEEDINGS JANUARY 9, 2007
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Dr. John David Wren
Direct examination by Mr. Bulsa

1 (Proceedings December 10, 2007)

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

4 THE COURT: All right. Are we ready for the jury?

5 MR. BULSA: Yes, sir.

6 THE COURT: All right. Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 As you know, when we recessed yesterday the state was
11 still in the midst of this presentation. So we'll continue
12 with that this morning.

13 Mr. Bulsa.

14 MR. BULSA: The state calls Dr. Wren.

15 DR. JOHN DAVID WREN, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Good morning, Dr. Wren.

19 A Good morning.

20 Q Please introduce yourself to the jury.

21 A John David Wren.

22 Q What's your occupation or profession?

23 A I'm a pathologist.

24 Q And where do you work, sir?

25 A I'm the laboratory medical director at Spartanburg

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Regional Medical Center, but I work for Spartanburg
2 Pathology Consultants, of which I'm the president.

3 Q And as a pathologist do you perform autopsies on
4 deceased persons?

5 A Yes.

6 Q What is -- would you give us the benefit of your
7 education and experience?

8 A I have a bachelor's degree, a master's degree and a
9 doctor of philosophy degree in chemical engineering. I
10 have an M. D. Degree from the Medical University of South
11 Carolina in Charleston.

12 I did a combined anatomic clinical pathology residency
13 at the Medical University getting credit for five years of
14 work in three years and ten months.

15 While I was there I was assistant medical examiner of
16 Charleston County. And I did forensic autopsies for about
17 three years one weekend a month under the supervision of
18 the Board of Forensic Pathologists at the Medical
19 University to get experience as a forensic pathologist.

20 Q And you've testified in court as an expert in forensic
21 pathology?

22 A Yes. Probably 150 to 200 times by now.

23 MR. BULSA: Your Honor, we would offer Dr. Wren as an
24 expert in forensic pathology.

25 MR. ROBINSON: No objection.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 THE COURT: He is so qualified.

2 Q Dr. Wren, did you perform an autopsy on Lee Evans?

3 A I performed an autopsy on an individual identified as
4 Lee A. Evans in the Spartanburg Regional Medical Center
5 Autopsy Room on December the 31st of 2004 beginning at
6 approximately 9:00 a.m.

7 Q Would you describe the injuries that he had to his
8 body?

9 A He had two gunshot wounds, one to the right arm that
10 entered on the ulnar surface, the little finger side of the
11 arm.

12 It passed into the tissues and up near the elbow more
13 toward the middle of the arm. It attempted an exit, but it
14 was stopped by the skin, potentially life-threatening,
15 although it didn't hit any vital structures. But any
16 gunshot wound is potentially life threatening.

17 The fatal gunshot wound was in his left flank region
18 just above the hipbone on the left side. It was 25 and a
19 half inches from the top of the head, four and a half
20 inches to the left of midline. It was in the, what we call
21 the, posterior axillary line.

22 The axilla is the medical term for the armpit. And if
23 you draw any imaginary line straight down from the anterior
24 fold of the armpit, it's called an anterior axillary line.
25 And, likewise, in the back it's a posterior axillary line.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 So it was in that general area.

2 The bullet passed upward through the 11th rib, through
3 and through the spleen, through the diaphragm, through and
4 through the left lower lobe of the lung.

5 It grazed the descending aorta as it continued its
6 course and came to rest in what's called the anterior
7 mediastinum, which is the tissue between the two lungs just
8 below the neck region where I recovered a bullet from
9 there.

10 I also recovered a bullet from the right arm of the
11 individual, with the wound itself in the back, was oval in
12 shape. It measured, the wound was .32, 32 hundredths by 33
13 hundredth inches in overall dimensions. And it had an
14 abrasion border, which as a bullet enters the skin if it
15 doesn't enter directly perpendicular to the skin, if it
16 enters at an angle, the bullet as it's spinning and it
17 enters the skin, it causes an abrasion much like you'd fall
18 against a surface and abraid the skin. And so therefore
19 you can tell which direction the bullet's coming from.

20 This abrasion was from 6:00 to 9:00 o'clock. Looking
21 at the wound on the body just imagine a clock. And from
22 the 6:00 o'clock position, which is inferiorly around to
23 the 9:00 o'clock position, the bullet was passing in that
24 direction. And it measured up to 15 hundredths of an inch
25 in width, meaning that the bullet was passing at quite an

Dr. John David Wren
Direct examination by Mr. Bulsa

1 angle into the body.

2 Now, I estimated the path of the bullet as upward at
3 75 to 80 degrees; horizontal being zero; perpendicular
4 being 90. So 75 to 80 would be about the way my finger is
5 pointing. It was going anteriorly, meaning it was passing
6 toward the front of the body. And it was going from left
7 to right.

8 The two bullets I recovered were copper-jacketed lead
9 bullets, and they had visible lands and grooves, both of
10 them. And the one from the, that went in the back, was,
11 had no distortion, but it measured about 35 one-hundredths
12 of an inch in diameter at the base.

13 Now, there's a discrepancy in the size of the bullet
14 with the size of the hole in the skin simply because
15 whether the skin is folded or loose or whether it's tense,
16 depends on the size of the hole.

17 And if you puncture the skin with anything, there can
18 be a variation of 25 percent and still be from the same
19 projectile, if it is a projectile, meaning that if a -- in
20 simple language, if you had a bullet that was 41 hundredths
21 of an inch in diameter or a .40 caliber bullet, then 25
22 percent of 40 is ten. So it could vary from 30 or 31
23 hundredths to 50 one-hundredths and still be from the same
24 bullet.

25 Like I said, this one was, had no distortion on it,

Dr. John David Wren
Direct examination by Mr. Bulsa

1 although it did pass through the rib. And it measured 48
2 one-hundredths of an inch in length.

3 Conversely, the other bullet was distorted along the
4 base, meaning that it had hit something and distorted the
5 base.

6 It measured 39 one-hundredths by 34 one-hundredths at
7 the base and 43 one-hundredths inch in length.

8 I labeled those bullets. The first one that went into
9 the back, I labeled that one with a five, which was the
10 last number of the autopsy, and an A indicating the first
11 bullet I recovered, and with a Greek letter delta, which is
12 a symbol I use just to recognize the bullet. The second
13 one I labeled 5-B and delta.

14 I forwarded both of those bullets that were signed for
15 by Officer Jack Durham of the Spartanburg County Police
16 Department.

17 Q Dr. Wren, you said one of the bullets was distorted.
18 Is that the one that was taken from his right arm?

19 A Yes.

20 Q In your expert opinion if Mr. Evans was seated in his
21 car in the driver's seat, can you tell us the scenario in
22 your opinion, how he might have received that wound to his
23 arm?

24 A Well, as I said, the bullet passed in in approximately
25 this position on me, and it wound up about in that

Dr. John David Wren
Direct examination by Mr. Bulsa

1 position. So it was going this way.

2 Now, he could have leaned over and been leaning over,
3 or somebody could have fired down in that direction or any,
4 of any angle that you can imagine an arm being that a
5 projectile would be going in that direction, would be
6 consistent with that wound.

7 I can't tell what position he was in just from the --
8 but I do know that the projectile was fired from distant to
9 his hand going toward his elbow.

10 Q Would it be consistent in that someone could have been
11 standing outside the driver's-side door firing into the car
12 while he was seated in the driver's seat?

13 A Yes, if he had his arm down in the position where it
14 would have just gone in that, like in that direction.

15 Q Okay. So the car is going this way and you're --

16 A The driver.

17 Q -- the driver and get shot like this.

18 A It could have gone like that, yes.

19 Q Now, how about the second wound, the fatal wound?

20 A The second wound, the assailant would have had to have
21 been basically below and to the left and slightly posterior
22 to the person that he fired the bullet at.

23 The person probably couldn't have been standing unless
24 he was on a ladder or something, simply because the bullet
25 was coming if the person was standing up, basically from

Dr. John David Wren
Direct examination by Mr. Bulsa

1 the ground going in that direction.

2 However, if the person were laying down, then the
3 person could have, that fired the shot could have, been
4 away from him and shot in that direction or any other
5 position that would have done that.

6 Q So in your expert opinion would it be consistent with
7 Mr. Evans having leaned towards the passenger's seat --

8 A Yes.

9 Q -- and being shot through the window?

10 A That's correct.

11 Q Okay. And, Your Honor, excuse me, Dr. Wren, for the
12 record, what was the cause of Mr. Lee Evans' death?

13 A I assigned the cause of death as exsanguination,
14 meaning he bled to death, secondary to internal hemorrhage.
15 He had a lot of blood in his chest cavity from the wound to
16 the, basically to the, aorta, which is the main artery from
17 the body, and then secondary to a gunshot wound to the
18 back.

19 Q Do you have any opinion as to how long he might have
20 lived?

21 A He wouldn't have lived over ten minutes, if that long.

22 Q Would he have been able to move?

23 A Yeah, well, probably, yes.

24 Q Probably could. So he would have been able to have
25 been balled up after this shot?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Balled up in the fetal type position?

3 A Pardon?

4 Q Balled up in the fetal type of position?

5 A Yes. He could have.

6 Q Thank you, Dr. Wren. That's all I have. Answer any
7 questions Mr. Robinson has.

8 MR. ROBINSON: I have no questions, Your Honor.

9 THE COURT: Thank you. You may step down.

10 MR. BULSA: We ask that Dr. Wren be excused.

11 THE COURT: He may be. Thank you.

12 (Whereupon, the witness was excused.)

13 MR. BULSA: I believe all the evidence that we sought
14 to introduce has been introduced, and the state would now
15 rest.

16 THE COURT: All right. Ladies and gentlemen, that is
17 all of the testimony or other evidence to be offered by the
18 state, at least in their case in chief.

19 Before we go any further I've got some legal matters
20 to address with the lawyers.

21 So I will ask you to please go to your jury room. Do
22 not yet discuss the case. I'll bring you back shortly to
23 continue.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: All right. Any matters to address,
2 motions or otherwise, before we continue?

3 MR. ROBINSON: May it please the Court, Your Honor.

4 At this time we would make a motion for a directed
5 verdict of acquittal in this case.

6 Your Honor, we believe that the state has not, taking
7 the evidence in the light most favorable to the state, we
8 believe that the state hasn't shown a direct evidence or
9 any substantial circumstantial evidence reasonably tending
10 to prove guilt in this matter.

11 The only -- they have not tied the gun to this
12 defendant. They have not tied any bullets to this
13 defendant. And the only witness that they had to testify,
14 she actually did not see what happened out at this section.
15 She was blocked by the trees.

16 As far the theory that the state has that this is the
17 hand-of-one-hand-of-all, they have not presented any
18 reasonably, any substantial circumstantial evidence or
19 direct evidence that he was involved in any sort of a plan
20 that was going on out there to do anything as far as
21 robbery or anything of that nature.

22 And on that basis we would ask for you to grant our
23 motion for a directed verdict.

24 THE COURT: Mr. Bulsa, do you wish to be heard?

25 MR. BULSA: Your Honor, the evidence is clearly in the

1 jury's consideration on the points that Mr. Robinson raised
2 from Ms. Lemke's testimony.

3 THE COURT: Well, based upon my consideration and
4 recollection of the evidence presented, it does appear that
5 there is sufficient direct as well as substantial
6 circumstantial evidence if found to be credible by the jury
7 that would allow them to reach the conclusion that the
8 defendant is guilty of each of the crimes that have been
9 alleged by way of these indictments.

10 So based upon the existence of that evidence your
11 motions for a directed verdict are denied.

12 Any other matters to address?

13 MR. ROBINSON: Not at this time, Your Honor.

14 I have pursuant to the Court's instructions and also
15 prior to the day of this trial, I have spoken to my client
16 regarding testimony, his own testimony. And we actually
17 talked again this morning about that.

18 He wishes to, to not testify in this matter. I'd ask
19 the Court to, to question him regarding that to make sure
20 it is knowing and voluntarily.

21 THE COURT: All right. Mr. Lynch, you've heard Mr.
22 Robinson tell me that he has discussed with you your right
23 to testify as well as not testify during the trial of this
24 case. Do you understand that you have that right?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Do you understand that you're the only
2 person that can make a decision as to whether or not you
3 will testify?

4 THE DEFENDANT: I fully understand, Your Honor.

5 THE COURT: And do you understand that while you do
6 have an absolute right to remain silent, any time you're
7 charged with a crime, that is nobody can make you testify?

8 Nobody can require that you make a statement; no one
9 can require that you answer any questions that relate to
10 these charges because you do have that absolute right to
11 remain silent.

12 If you wish to provide any testimony during the course
13 of this trial or produce any other evidence, now is the
14 only opportunity that you will have to do so.

15 So if you want to provide this jury with any testimony
16 or you want to call any witnesses or you want to introduce
17 any other type of evidence, now is the opportunity that you
18 will have to do so.

19 Now, if you elect not to testify I will instruct the
20 jury that they may not consider that fact in any way
21 whatsoever during their deliberations or in their
22 determination as to whether or not your guilt has been
23 proven beyond a reasonable doubt.

24 At the same time, if you do choose to testify you will
25 have to answer not only questions asked of you by your

1 lawyer but you'll also have to answer any relevant
2 questions asked by the prosecutor even if the responses to
3 those questions might tend to prove you guilty of some
4 crime the state claims you committed.

5 Now, have you and Mr. Robinson had time to discuss the
6 advantages and the disadvantages of your testifying, as
7 well as your not testifying?

8 THE DEFENDANT: Yes, we have, Your Honor.

9 THE COURT: And do you appreciate what those
10 advantages and disadvantages are?

11 THE DEFENDANT: I certainly do, Your Honor.

12 THE COURT: And have you had time to reflect upon your
13 decision as to whether or not you will testify?

14 THE DEFENDANT: I have, Your Honor.

15 THE COURT: And have you reached a decision?

16 THE DEFENDANT: Yes, sir, I have, Your Honor.

17 THE COURT: And what is that decision?

18 THE DEFENDANT: I will not like to testify, Your
19 Honor.

20 THE COURT: And is that a decision that you reached of
21 your own free will and accord?

22 THE DEFENDANT: That is correct, Your Honor.

23 THE COURT: Did anybody force you or pressure you into
24 that decision?

25 THE DEFENDANT: They did not, Your Honor.

1 THE COURT: You made it on your own after proper
2 reflection?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: You're satisfied with that decision?

5 THE DEFENDANT: I am, Your Honor.

6 THE COURT: Do you have any other witnesses you want
7 Mr. Robinson to call during the trial of this case?

8 THE DEFENDANT: I do not, Your Honor.

9 THE COURT: Do you have any other evidence you'd like
10 for him to present that has not already been presented?

11 THE DEFENDANT: I do not, Your Honor.

12 THE COURT: Okay. Thank you. Be seated.

13 THE DEFENDANT: Thank you, Your Honor.

14 THE COURT: All right. Any other matters to address
15 before we conclude?

16 MR. BULSA: No, sir.

17 MR. ROBINSON: No, sir, Your Honor.

18 THE COURT: Okay. Bring the jury in, please.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. Ladies and gentlemen, as you
22 know, the state has rested their presentation.

23 Mr. Robinson, does the defendant wish to present any
24 additional evidence?

25 MR. ROBINSON: No, sir, Your Honor.

Closing arguments

1 THE COURT: All right. Ladies and gentlemen, that is
2 all of the testimony and evidence to be received during the
3 trial of this case.

4 What remains to be done are the lawyers' final
5 summations, after which I will instruct you on the law, and
6 then you'll begin with your deliberations in the case.

7 So please give the lawyers your attention now as they
8 give you their final summations.

9 Mr. Bulsa.

10 MR. BULSA: May it please the Court.

11 THE COURT: Yes.

12 MR. BULSA: Ladies and gentlemen, I first want to
13 thank you for your attention that you've held throughout
14 the course of this trial.

15 As you've heard, on December the 30th of 2004 Lee
16 Evans died a tragic death, an unnecessary death, a horrible
17 death.

18 As you just heard from Dr. Wren, the evidence fully
19 supports the fact that Lee Evans was shot while seated in
20 his vehicle. He was where he was supposed to be minding
21 his own business, talking to his girlfriend on the cell
22 phone and waiting to go visit his aunt.

23 I suggest to you, as Dr. Wren told you, that his arm,
24 right arm, was in somewhat in this area. The evidence
25 suggests that it appears that when he was confronted from

Closing arguments

1 the outside, the cell phone was still in his hand. He
2 could have still been speaking.

3 Ms. Kelly tells you that she heard something, she
4 heard a bang, a noise. She didn't know what it was. And
5 then she was yelling for Lee, Lee, Lee, what's wrong,
6 what's wrong.

7 Then the evidence suggests that after being shot that
8 first time in the arm Mr. Evans was trying to flee, if
9 possible, leaning towards the other side of the car to get
10 away from his assailants and he was shot in cold blood the
11 second time in the back. And because of the positioning of
12 his body, that bullet traveled through his heart, and he
13 died. But, more importantly, what Dr. Wren told you is
14 that Lee Evans could have lived about ten minutes longer.

15 We know he was out of the car. The evidence, an
16 inference you can draw from the evidence, is that he was
17 pulled from that car.

18 He could have been in a fetal position balled up as
19 Ms. Lemke testified to you that David Lynch told her he
20 was. The victim was in a balled-up position.

21 D. J. told Ms. Lemke himself that he kicked him to get
22 him to unfold. And you heard testimony from the officers
23 that the victim's pockets were outturned. We know his ring
24 was missing. His cell phone was missing.

25 The physical evidence itself on Mr. Evans corroborates

Closing arguments

1 what Ms. Lemke says that D. J. and Antwon Salters told her
2 happened. We know she wasn't in a position to see what
3 happened. She was parked a distance away waiting.

4 Ladies and gentlemen, there's a point of law, and it's
5 the law in South Carolina, that if you act with another
6 person or persons in the commission of a crime, then you
7 are equally responsible for that crime. You are guilty
8 under the law of the-hand-of-one-is-the-hand-of-all.

9 You may not agree on who fired the gun. I'm going to
10 tell you right now. You don't have to agree on that. You
11 just have to agree that this man was a participant in that
12 crime.

13 Antwon Salters pled guilty, as Mr. Robinson told you
14 in his opening, under the theory the-hand-of-one-is-
15 the-hand-of-all. That's the same theory that he's being
16 tried under. The hand of one is the hand of all, because
17 he and Mr. Salters went to that vehicle, confronted
18 Mr. Evans and killed him.

19 We don't have to rely on Ms. Lemke. You saw the
20 diagram he drew in his own hand. He put himself at the
21 crime scene. He put himself there when a gun was shot. He
22 actually, he puts himself and Antwon on the same side of
23 the car as the driver's window.

24 Ms. Lemke testified that while Mr. Salters and
25 Mr. Lynch were telling them what happened that he was the

Closing arguments

1 one that tried to bust the window. That's a willing
2 participant in a crime.

3 This crime was planned out by D. J. at his place. He
4 had the guns; he gave Mr. Salters a gun; he had a gun. He
5 wanted whatever they were going to get.

6 He told Sergeant or Lieutenant Woodcock when
7 Lieutenant Woodcock asked him a specific question
8 confronting him about a robbery, a plan of robbery, were
9 you there to rob Lee or was that a possibility. Basically,
10 but we were there for Shad.

11 They were going to go rob Shad. They got in front of
12 Shad's house. Shad wasn't home. Unfortunately for Lee,
13 Lee was getting ready to go visit his aunt.

14 You don't have to find that their plan was to rob Lee.
15 Lee asked. Lieutenant Woodcock questioned him. It was a
16 crime of opportunity for them. He went there with a mind
17 bent on crime, and they were going to commit the crime
18 regardless of who it was going to be.

19 They rode around the neighborhood and pointed out a
20 few houses. Shad's house was the best option. He wasn't
21 there. Lee was there.

22 And as Mr. Lynch told Kelly Oliver, me and Twon popped
23 Little E. All the evidence in this case that you've heard
24 proves beyond a reasonable doubt that he is a participant
25 in that crime.

Closing arguments

1 There's another point of law that is the law in this
2 state, is that if you enter into a crime and during that
3 crime a natural or probable consequence flows from those
4 actions, you are guilty of those additional actions.

5 When you go armed with a weapon to commit the crime of
6 armed robbery, I submit to you it's a natural or probable
7 consequence that a gun may be discharged, that someone may
8 be shot.

9 So the murder flows from the crime of armed robbery.
10 Because they went there to rob and a man was killed and
11 Mr. Young was shot, he's responsible for the initial crime
12 of robbery. And under the natural or probable consequence
13 and the hand-of-one-is-the-hand-of-all, he is just as
14 responsible for the murder and the assault and battery with
15 intent to kill.

16 Ladies and gentlemen, we put up a lot of evidence the
17 first part of this case. We went through all the physical
18 evidence, the shell casings, the bullets, the pictures. We
19 even brought in the murder weapon. This was his. This is
20 the murder weapon. We know that he gave it. He either had
21 it or gave it to Antwon Salters. This was his.

22 Ms. Oliver seen him with a .380. Ms. Lemke saw him
23 give Salters a gun. And he had a gun. He had both guns.
24 This was his. Where was it found? Ditched. I suggest to
25 you that's the way crimes occur. They get rid of the

Closing arguments

1 murder weapon. Mr. Smith, young man, picked it up to his
2 own misfortune.

3 The physical evidence suggests that at least five,
4 possibly six, shots were fired. They took two bullets out
5 of Lee Evans, one bullet out of his car. So we know at
6 least three shots were fired into that car.

7 A shell casing was found on the scene of that car that
8 suggests that the gun was actually stuck through the
9 window, probably the shot that killed him. So the clear
10 intention was to kill him.

11 There were at least two shots to Mr. Young, so we've
12 got two wounds on him, in his arm and his leg. He's not
13 going towards the crimes. He's just walking down the
14 street and happens to be in the area.

15 And then there's another. Both bullets passed through
16 him. We know there was a bullet recovered in the truck in
17 the front of Ms. Whiteside's house in Boyce Whiteside's
18 truck. That may have been one of the ones that passed
19 through Mr. Young. It may not have been. He may have been
20 shot at three times. Three and three is six.

21 But I suggest to you the nature of the shooting and
22 the fact that Mr. Young, a man just walking down the
23 street, shows that participants in this crime didn't want
24 to leave any witnesses. Kill all the witnesses.

25 Lee Evans may not even have been given a chance to

Closing arguments

1 open the door. Mr. Young is just walking down the street.
2 There's no -- he told you he couldn't tell who it was. All
3 he did was saw a car go by. He wasn't going to look. He
4 was going to his friend's house. What happens? Somebody
5 shoots at him. Fire as he described it at him.

6 That is consistent with the crime that the armed
7 robbery was planned, and they were going to use the weapons
8 if necessary, and in this instance shoot whoever was in the
9 area.

10 This man is guilty of every crime that he's charged
11 with. The judge will define in legal terms what those
12 crimes are.

13 Murder is the unlawful killing of another person with
14 malice aforethought. That malice is either expressed or
15 implied.

16 Then he will describe for you what malice is, how you
17 can find it being expressed malice or implied malice.
18 Because this act was committed during a crime, a violent
19 crime, armed robbery, that can be malice. The fact that a
20 weapon was used can infer malice.

21 I submit to you that those questions are going to be
22 easy for you. You should be able to go back there and find
23 that the murder occurred, assault and battery with intent
24 to kill occurred and armed robbery occurred.

25 Mr. Robinson in his opening said this is about who

Closing arguments

1 shot, who shot. It's not. It's about him being there and
2 participating in this crime.

3 All the evidence, all the evidence says he was.
4 There's been no testimony or evidence about Ms. Martena
5 Parks having any affair with Lee Evans. That was what Mr.
6 Robinson was telling you in his opening that their motive
7 was.

8 The fact that Antwon Salters is guilty, he is because
9 he's a, he was a willing participant, guilty under
10 the-hand-of-one-is-the-hand-of-all. He's a willing
11 participant. Guilty under the hand-of-one-is-the-
12 hand-of-all, of all crimes.

13 I suspect Mr. Robinson is going to come up here and
14 talk to you about Ms. Lemke, why did she come and testify,
15 she wasn't made a promise but she wants consideration.
16 That's human nature, ladies and gentlemen.

17 She was arrested March the 30th. She gave her
18 statement March the 30th. She gave a statement March the
19 31st and gave a statement April the 4th.

20 She took the police around to show them where the
21 clothes were disposed of. She took the police to show them
22 where the cell phone was disposed of.

23 He was arrested in April and talked to the police in
24 July. He took the police where he disposed of the clothing
25 and tried to show them where they disposed of the cell

Closing arguments

1 phone.

2 He corroborated Ms. Lemke. Ms. Lemke, I suggest to
3 you, testified truthfully. She's hoping to gain
4 consideration, and rightfully. Your common sense, I would
5 suspect that you would agree that she probably should. She
6 came clean and testified and told what happened.

7 And while at first she told you that she wanted to
8 minimize her involvement, she came clean. She came clean
9 all the way through. I submit to you that everything she
10 told you is accurate.

11 But this case is not just about her. She's a very
12 important part of the case, but we've got the defendant's
13 own comments and discussions with the police, and we have
14 his comment to Ms. Oliver. She saw him in the gas station
15 gassing up, got to get out of town. Antwon just popped
16 Little E.

17 Look at his actions. His actions as well as his words
18 show that he is guilty. He flees, and Mr. Salters and
19 everybody else, to Florida.

20 And he tries to sell the gun, or Ms. Lemke said they
21 stopped in Atlanta with the idea of him selling the gun.
22 She didn't see any money, yet she didn't see the gun. But
23 we know at least one of the guns wasn't sold in Atlanta
24 because one was found.

25 Then what does he do? He leaves the state again and

Closing arguments

1 goes to North Carolina. And this is a man that Mr.
2 Robinson suggested in his opening statement was just going
3 to get drugs, which I'm not sure there's actually any
4 evidence of that either.

5 The evidence while they were there is to go to get,
6 maybe get, drugs and money, but it was to rob for that, not
7 to go buy drugs.

8 If that's all he was doing and this man goes crazy and
9 kills somebody, you tell the police. You don't stay with
10 it. You don't run with them to Florida. You don't then
11 get out of town. You go tell the police. His actions also
12 prove he's guilty.

13 All the evidence told and untold shows that man is
14 guilty of killing Lee Evans, guilty of robbing Lee Evans,
15 guilty of shooting Leon Young, because, as I said, if
16 Mr. Salters is the one that pulled the trigger, in the law
17 of South Carolina it's just as if he pulled the trigger.

18 If he pulled the trigger, the law of South Carolina
19 is, it's just as if Antwon Salters pulled the trigger. It
20 doesn't matter. That's not the question to answer.

21 Armed robbery is just pretty much as it states, that
22 is robbed, something is taken from someone by force with a
23 deadly weapon.

24 You don't have to have money, you don't have to have a
25 lot of money. A cell phone itself is enough. He told the

Closing arguments

1 police that a ring was taken because he showed them. He
2 tried to show them where it was thrown out. And we know
3 the ring wasn't on Lee's hand, his semipro professional
4 ring.

5 Finally, the assault and battery with intent to kill
6 is an assault and battery accompanied with malice. It's
7 very similar to murder, but the man lives. Malice is
8 implied in murder.

9 All the crimes flow together. The crimes should be
10 the easy part. Your main discussions should focus on
11 whether he was involved. And I suggest to you that too is
12 easy because all the evidence says he was. And he's guilty
13 of all the crimes charged.

14 I ask on behalf of the family and Lee Evans and on
15 behalf of Mr. Young that you do your job and administer
16 justice and find the truth using your common sense and your
17 common-life experiences and hold this man responsible as he
18 should be and convict him of all of these crimes. Thank
19 you.

20 THE COURT: Mr. Robinson.

21 MR. ROBINSON: May it please the Court.

22 Good morning again. You know, we all agree this is a
23 tragedy. This young man's, his life was taken like this.
24 But it will be a worse tragedy in this case to convict this
25 man under the theory that the state is trying to put forth.

Closing arguments

1 They're trying to say that because he was present in
2 the area that he was the person and he should be held
3 accountable, just as well as Antwon Salters who pled guilty
4 earlier in November to all of the charges under the theory
5 of-hand-of-one-and-hand-of-all. He still pled guilty in
6 this court to all of those charges.

7 Now, this gun that he talks about, he just showed you
8 this gun. The state has not shown any evidence at all
9 linking this gun to David. Not one shred of evidence has
10 been shown.

11 There are no -- you didn't get any fingerprint expert
12 to come in here to talk about this gun that they took
13 prints and they said the gun belongs to him. You didn't
14 see anybody like that.

15 All you saw was a person that said, this Mr. Tyrone,
16 he said that he found a gun in the Whispering Pines area or
17 whispering some sort of area, and he said that other guns
18 were also laying out there as well. But nothing links this
19 particular gun to David Lynch, David McDowell.

20 And, you know, I didn't follow through with my promise
21 to you or my discussion to you when I first developed in
22 this case when I talked to Martena Parks. I didn't put
23 that in in this case.

24 But let's talk about what the state didn't put in. If
25 you recall, the solicitor, the assistant solicitor, is

Closing arguments

1 saying that other people, there were other codefendants in
2 this case. In this case there were four other
3 codefendants, three or four other codefendants.

4 They had one. They had Ms. Lemke. Where are the
5 other ones? Why didn't the other ones testify? Do they
6 have something different than what Ms. Lemke said?

7 When they heard Ms. Lemke yesterday testify and so
8 forth, did they not put these people up because they were
9 going to say something different? And where are those
10 people? Where are the other codefendants that are out
11 there that she mentioned in her opening statement? They're
12 not here. They didn't present that evidence.

13 But let's talk about Ms. Lemke. Now, you all have the
14 opportunity to view witnesses, and we present to you
15 different information about the ways we get to
16 cross-examine the witnesses and so forth.

17 But here is the one thing you have to realize from her
18 testimony. She says that she was blocked by trees. The
19 solicitor asked her twice about it, and she said she was
20 blocked by trees and she couldn't see anything.

21 Okay. Now, if she didn't see anything, she's getting
22 her information from other sources; we can presume. Well,
23 is she believable or credible? Let's talk about her record
24 that was up here.

25 Now, you remember Antwon Salters. He pled guilty

Closing arguments

1 under the hand-of-one-hand-of-all back in November. Okay.
2 Now, it's also interesting that she's also charged with a
3 burglary first in which she was involved.

4 Burglary first. That carries from 15 years to life.
5 And why was she involved with him? What benefit does she
6 have?

7 Now, he was not called by the state to testify in this
8 case. Why? Is she trying to protect him? See, she hasn't
9 been -- he hasn't been sentenced yet in this case. And she
10 hasn't been sentenced for her burglary first, which carries
11 15 years to life, and she's not been sentenced yet on her
12 accessory after the fact, which carries up to 15 years.
13 Think about the motive that she has for lying. And think
14 again.

15 You know I questioned her about three different
16 statements that she made to the police. And you've heard
17 Officer Bryant. He's the one who was talking to her and
18 taking these statements from her.

19 But, you know, the first statement she said, she
20 mentioned, that they were going over there for marijuana.
21 But she didn't mention anything in those statements, in the
22 first two statements, about any plan at all. No plan.
23 Nothing was ever mentioned about a plan.

24 She only mentioned any sort of plan, and that was
25 regarding Shad, the guy with the drugs. And that was only

Closing arguments

1 after a period of months in which she was in custody and
2 Officer Bryant was questioning her. And it was interesting
3 listening to her explanation as to why she did not -- why
4 she gave the statements the way she did.

5 I think all of us growing up learned that telling the
6 truth is one of the best things that you can do. And one
7 of the worst things you can do is lie, because once you
8 tell a lie you have to tell other lies to cover up the
9 previous lie. And after a while it becomes a cycle.

10 I would suggest to you in this matter that Ms. Lemke
11 will say anything to protect herself, to help her and her
12 guy, this Antwon Salters that was she was involved in a
13 burglary with. And she's the only witness that they have,
14 the only witness.

15 The other codefendants in this case, we don't know
16 anything about them. They mentioned it in their opening
17 statement. They mentioned we've got -- there were four of
18 them or five of them out there charged and so forth. And
19 none of those people are here. Why?

20 But I suggest to you that self-interest, deceit and
21 basic lack of integrity as to Ms. Lemke make her testimony,
22 if you will, entirely incredible, because what she has, she
23 never saw anything. She said that. And her three
24 statements that she made aren't all the same.

25 And you look at her previous record as well. You

Closing arguments

1 remember on direct examination with Mr. Bulsa she didn't,
2 she didn't remember that she had a prior charge. And he
3 had actually, he had actually to go back and ask her again,
4 and then she remembered her prior charge that she had.

5 And you also remember as well that she met with the
6 solicitor's office at least twice in preparation for this
7 case. And she gets up on the stand.

8 And Mr. Bulsa has just talked to you a second ago
9 about, well, she's coming clean finally. Well, why didn't
10 she come clean in the beginning? Why did she give three
11 different statements? Why, why? Because she's not telling
12 the truth.

13 Her history that she has of crime establishes that she
14 is going to protect herself at any cost. And any cost
15 would be to help the state convict an innocent man. And
16 she's willing to do that.

17 And if you notice when she was walking out yesterday,
18 she was looking right at the state's desk the whole time
19 when she was walking back. The same thing with Ms. Kelly
20 Oliver who you saw a little while ago, yesterday, the same
21 exact thing, looking at the solicitor's office, said she
22 met with them at least a couple of times.

23 But, you know, with Ms. Oliver not one person ever
24 corroborated what she says. They didn't have anybody else
25 corroborate that. They didn't bring in -- it would have

Closing arguments

1 been a lot easier for them, a lot more believable if they
2 had brought someone else in, for instance, Nikki Holmes who
3 was with David.

4 It would have been a lot more convenient for them and
5 a lot more believable if they brought her in to say, oh,
6 yeah, that's what he said, I was there. That's not what
7 was done. They didn't bring anybody else in to corroborate
8 anything anyone said.

9 And as far as this gun that was found, if it's
10 whispering whatever it's called, whispering or western,
11 which I couldn't really understand what he was saying, but
12 she never testified -- if you'll listen to Ms. Lemke, she
13 never testified any gun was thrown out of a car. Never,
14 never at any time.

15 And listen to her story. She says, she says that what
16 David said to her was that he went up and was, put the, put
17 the window out with his elbow or something like that.

18 But I ask you when you go back to the jury room to
19 look at the picture of the car, the picture of the window.
20 And you tell whether that's an L or that's a gunshot,
21 whether her story makes any sense.

22 Now, Mike Woodcock, the investigator who interviewed
23 David, he says there was no plan. You heard him on
24 cross-examination. He said that he never mentioned any
25 plan in this case.

Closing arguments

1 But here's what the state can't prove. Okay. They
2 can say to you, oh, well, yeah, he went to North Carolina
3 or Florida, so that must mean that he has, that he is
4 guilty of these crimes.

5 That doesn't mean anything, folks, because he was not
6 under arrest. They had no pending charges against him at
7 that time. What they had is that Ms. Lemke says that she
8 didn't see anything. That's all they have. No one else
9 was there at the scene and saw him doing anything.

10 A mere presence, the judge is going to talk to you
11 about a few moments ago, is not enough in this case. It's
12 not enough to convict under the-hand-of-one-hand-of-all.

13 But not one person ever saw him, David, near the
14 Evans' car. No one saw that. No one corroborated that.
15 And no one saw what happened when anyone got out of the
16 car. No one saw anything as far as what happened. There's
17 no testimony that he ever shot the victim.

18 You heard Ms. Lemke. She said that Antwon Salters
19 confessed to her that he shot the guy. But, you know, the
20 state didn't produce any evidence regarding David, that he,
21 like fingerprints, D. N. A., any sort of evidence that
22 would place him at that scene. Nothing around the car. No
23 sort of marks on the car, no fingerprints, nothing.

24 And no one ever saw him in the possession of any cell
25 phone or any property. And there was no testimony from any

Closing arguments

1 of the officers that they put forward here in this case,
2 not Officer Bryant, Officer Taylor, Officer Wilde, Officer
3 Durham, Officer Wilson that David ever told him he did
4 anything.

5 But they did testify that he was very cooperative with
6 them in this case, very cooperative. Is being the
7 cooperative person the mark of someone who is guilty or not
8 guilty?

9 Is it logical that maybe with Mr. Salter being the way
10 he was that David was fearful of him, that he and
11 Ms. Holmes were fearful of him and that's why they left?

12 If someone that would murder someone else has a gun,
13 what do you think a person is going to do if they see that
14 person shoot someone else? They're going to be naturally
15 fearful that they're going to do the same thing to him or
16 her. And that could be a plausible possibility here.

17 And if you look at the state's case, they didn't
18 present any evidence saying he ever tried to evade the law,
19 no evidence about any warrants or anything like that that
20 he had on him.

21 Now, in a few moments the judge is going to charge you
22 with the law of this case. I'm just a lawyer; Mr. Bulsa is
23 just a lawyer. He's a fine lawyer. The whole staff is
24 fine. This has been a great trial. And on behalf of
25 Mr. Lynch, my investigator and his family appreciate the

Closing arguments

1 professionalism and so forth that was shown in this trial.

2 We appreciate your time.

3 But if I say anything different in a few moments about
4 the law that's in this state, listen to what the judge says
5 instead of me, because I may make a mistake. I'm not
6 perfect.

7 What Mr. Bulsa left out of his closing statement as he
8 walked over to my client several times, walked over to
9 David and shook his hand at him and so forth, what he left
10 out here is what the state has got to prove in this case,
11 they have got to show.

12 It's not just that you were merely present at the
13 scene. That's not, that's not what it is. That's not what
14 the-hand-of-one-the-hand-of-all is.

15 We all know that the person that shot this individual
16 was Antwon Salter. What the state has got to show, now,
17 beyond a reasonable doubt, and what you do with that, a lot
18 of people don't know what that means, but/and the judge is
19 going to charge you in a few seconds.

20 But what you have to do, you have to kind of put the
21 state's case up there and see if they can imply the facts
22 that they presented in their case, whether or not they have
23 shown beyond a reasonable doubt as to each element of
24 murder, assault and battery with intent to kill and armed
25 robbery, whether they've shown that David Lynch committed

Closing arguments

1 those crimes. That's what they have to show beyond a
2 reasonable doubt.

3 But they're going under this hand-of-one-hand-of-all
4 theory. And what does that mean? What it means is that
5 the people that commit the crime, it's just not being
6 present at the scene. That's not enough. Mere presence is
7 not enough.

8 They have got to show you beyond a reasonable doubt
9 that there was a plan to do what they were going to do.
10 They have to show that there was a plan to commit this
11 crime. They have to show that David Lynch, he had a plan
12 with Mr. Salter to commit this crime. That's what they
13 have to show.

14 Beyond a reasonable doubt. That's what they have to
15 show in this case. They have to show there's a common
16 design and plan to commit this crime, these crimes, of
17 murder, ABWIK, which is assault and battery with intent to
18 kill, and armed robbery.

19 And, ladies and gentlemen of the jury, the state has
20 not put up evidence to establish their case beyond a
21 reasonable doubt against David Lynch. They haven't
22 connected him with a gun that killed this individual.
23 They've got no fingerprints on any guns. The only witness
24 that they had that puts him there is Margaret Lemke.
25 That's it. No one else with can put him there.

Closing arguments

1 And you've to think to yourself and use your common
2 sense and your backgrounds. Y'all have different
3 experiences with businesses, companies, hobbies, things
4 like that.

5 Use your common sense. Think to yourself whether or
6 not Ms. Lemke is credible, whether she is credible to say
7 what she says. And I would submit to you that she's not,
8 not by a long shot.

9 And if she's not credible in this case, the state has
10 not put up any evidence, any credible evidence, that links
11 the gun to David Lynch, none of these crimes to David
12 Lynch, because none of the people in this case, Mr. Leon
13 Young who is sitting right there, ever saw anybody, nobody.

14 And no items were ever found on Mr. Lynch at any time.
15 Nothing. No one. Nothing was ever found. No one ever
16 came into this courtroom and said they ever found anything
17 on Mr. Lynch. None of these deputies who all came up here,
18 none of them said anything. No gun on Mr. Lynch, no
19 property that was allegedly taken from that vehicle on
20 Mr. Lynch. Nobody. Nothing. No fingerprints. Nothing
21 linking him to these crimes.

22 All they have is the testimony of one lady who has a
23 record, who has a clear motive in this case, who gave
24 several statements in this matter. That's all they have
25 linking David to this case, to this matter.

Jury charge

1 And if that's all they have, ladies and gentlemen,
2 have they shown, shown to you, beyond a reasonable doubt
3 that David Lynch is guilty of murder under the
4 hand-of-one-hand-of-all?

5 I said in the beginning this was a tragedy. No one
6 disputes this is a tragedy, what happened out there that
7 night. No one disputes that. I don't dispute that.

8 But it would be a greater tragedy in this case to
9 convict an innocent man in this matter. And I would submit
10 to you that Mr. Lynch has always maintained his innocence
11 at all times, at all times, and he still maintains his
12 innocence in this case.

13 So, ladies and gentlemen of the jury, on behalf of the
14 family of David Lynch who is sitting in the courtroom with
15 us today, on behalf of my staff and on behalf of David, I
16 ask you to return a verdict that speaks the truth, and that
17 is not guilty. Thank you.

18 THE COURT: Madam forelady and ladies and gentlemen of
19 the jury, you of course have now heard and seen all the
20 evidence, as well as the final summations of the lawyers.
21 And therefore I'm going to instruct you on the law that's
22 applicable in this case.

23 Then you're going to be asked to go back and begin
24 with your deliberations. And through that process you will
25 examine the evidence, decide the facts, apply the law and

Jury charge

1 arrive at a fair and just decision.

2 It is your exclusive duty to determine what the facts
3 are. You do that through your own common sense examination
4 and evaluation of all of the testimony and other evidence
5 received during the trial of this case.

6 You 12 jurors alone will decide what weight, value and
7 effect to give to any particular testimony or other
8 evidence in the case. Your sole objective of course is to
9 simply reach the truth in the matter. And by doing that
10 you will have fulfilled your obligations as jurors, and
11 that is to simply give both the state and the defendant a
12 fair and impartial trial in this case.

13 Now, as you know, in this case the state has brought
14 three separate and distinct charges against the defendant.
15 Each of these charges is alleged to have arisen out of one
16 particular event or course of events that the state alleges
17 occurred on or about December the 30th of 2004.

18 There are three indictments, each charging a separate
19 and distinct offense. Those three criminal offenses are
20 murder, assault and battery with intent to kill and armed
21 robbery.

22 Now, the indictments are going to be in the jury room,
23 because it's on the back of each of those indictments,
24 madam forelady, you're going to be asked to indicate the
25 jury's unanimous decision as to that particular charge.

Jury charge

1 But while the indictments are in the jury room, they
2 are not evidence of anything. As I told you, they are not
3 proof of anything. They're simply the means by which a
4 person is brought into this court and is put on notice of a
5 crime that the state claims that they have committed. For
6 your purposes the indictments will serve as the verdict
7 forms. But they serve no other purpose so far as you 12
8 jurors are concerned.

9 Now, as to each of the charges and as to the
10 allegations contained in each of those indictments the
11 defendant has entered a plea of not guilty. And, as I told
12 you, that plea of not guilty therefore places upon the
13 state the burden of proving the allegations that they have
14 set forth in each of those indictments, the burden of
15 proving each of the essential elements that constitutes the
16 crimes that are alleged in each of those indictments; and
17 therefore the burden is upon the state to establish the
18 defendant's guilt to the satisfaction of you 12 jurors
19 beyond a reasonable doubt before any verdict of guilty
20 could be returned.

21 The burden is never upon a defendant or a person
22 accused of a crime to prove that they are not guilty or to
23 prove that they are innocent, because in many cases that
24 might not be possible.

25 The burden is always upon the state in bringing a

Jury charge

1 charge against another to establish that person's guilt
2 beyond a reasonable doubt.

3 You are instructed that it is a vital, important and
4 cardinal rule of law that every defendant in a criminal
5 trial, and it doesn't matter how serious the offense might
6 be. Every defendant is under the constitution and the law
7 presumed to be innocent of any charge the state claims they
8 have committed.

9 That presumption of innocence remains with every
10 defendant, as it does with this defendant, from the time
11 that he is placed under arrest and throughout the course of
12 the criminal process and even throughout the course of the
13 actual trial in the case.

14 That presumption of innocence will be with Mr. Lynch
15 even as you go back into the jury room to begin with your
16 deliberations in this case. And that presumption of
17 innocence will be with him in that jury room, and it will
18 remain with him forever unless you 12 jurors determine that
19 he's no longer entitled to that presumption of innocence.

20 That is after you've carefully considered the evidence
21 in the case, and from that evidence you've decided the
22 facts, and after deciding those facts you have applied the
23 law I provide you, if you 12 jurors determine that the
24 defendant's guilt has been proven beyond a reasonable
25 doubt, then he would no longer be entitled to the

Jury charge

1 presumption of innocence. But it's only if, unless and
2 until the state satisfies you of his guilt beyond a
3 reasonable doubt that that presumption of innocence would
4 no longer be applicable.

5 Now, while the state does have the burden of proving
6 the defendant's guilt beyond a reasonable doubt, that
7 doesn't mean that the state has to prove his guilt beyond
8 all doubt or beyond any possible doubt. But the state does
9 have the burden of proving the defendant's guilt to your
10 satisfaction beyond a reasonable doubt.

11 The term reasonable doubt should be given its plain
12 and ordinary meaning. A reasonable doubt is the kind of
13 doubt that would cause a reasonable person to hesitate to
14 act upon the information provided.

15 A defendant in a criminal trial is entitled to any
16 reasonable doubt that arises from the evidence or lack of
17 evidence in a case. And if upon any factual issue
18 essential to a finding of a verdict of guilty you have some
19 reasonable doubt as to how that issue should be resolved,
20 it is your duty to resolve any reasonable doubt in favor of
21 the defendant.

22 And therefore if upon your consideration of the whole
23 case you have a reasonable doubt as to his guilt as it
24 relates to a particular charge, you must resolve that
25 reasonable doubt in his favor and return a verdict of not

Jury charge

1 guilty as to that charge.

2 And, on the other hand, if you have no reasonable
3 doubt as to the defendant's guilt as it relates to a
4 particular indictment, then of course it would be your
5 corresponding duty to convict the defendant or to find him
6 guilty of any crime that has been proven to your
7 satisfaction beyond a reasonable doubt.

8 Now, the same law that provides that you are the
9 judges of the facts also provides that I am the judge of
10 the law. And that simply means that no one is going to
11 tell you how to arrive at your determination of fact in
12 this case.

13 You do that, as I have stated, through the exercise of
14 good judgment and common sense conscientiously applied to
15 the testimony and the evidence received during the trial of
16 this case.

17 You must however under your oath as a juror accept the
18 law as I provide it to you. And then you simply apply that
19 law to the facts as you determine them to be.

20 You're not to concern yourself with what you thought
21 the law was before you came to serve as a juror or what you
22 think the law ought to be.

23 Under your oath you must simply accept the law as I
24 provide it to you as being the law that is applicable in
25 this particular case. And then you take that law and you

Jury charge

1 apply it to the facts as you 12 jurors determine those
2 facts to be based upon your common sense examination of the
3 evidence in this case.

4 Now, as I told you, you're the sole judges of the
5 facts in this case. And therefore you are necessarily the
6 sole judges of the credibility, that is the believability,
7 of each witness that has testified during the course of
8 this trial.

9 You 12 jurors alone will decide what weight, value and
10 effect to give to any particular witness' testimony, or
11 even a portion of that testimony. And therefore there are
12 a number of factors which you should consider in arriving
13 at your assessment as to a witness' credibility, and I'm
14 going to list those factors for you.

15 You may consider the demeanor of the witness. That is
16 how the witness appeared to you as the witness testified
17 from that witness stand. Was the witness straightforward
18 in responding to questions, or was the witness hesitant or
19 evasive in responding to questions that were asked of that
20 particular witness?

21 Simply put, did the witness appear to you to be
22 telling the truth and to have knowledge of the facts to
23 which that witness has testified.

24 You may also consider whether or not the testimony of
25 a witness is consistent, or is it inconsistent with that

Jury charge

1 witness' own testimony or with other testimony and other
2 evidence received during the trial of the case.

3 You may consider how the witness came to know the
4 facts to which that witness has testified. That is what
5 was that particular witness' opportunity and ability to
6 perceive the existence of those facts to which that witness
7 has testified by having previously used his or her senses,
8 and then what is that witness' ability to be able to come
9 into court and to accurately recollect to you as to what
10 they have previously seen or heard, or felt for that
11 matter.

12 You may also consider any bias or prejudice or
13 interest that you find a witness might have in a case. And
14 by that I simply mean do you find some reason that a
15 particular witness would come into court and would testify
16 one way or another to help or to hurt one side or the
17 other.

18 You may consider any interest that a witness might
19 have in the outcome of this case if you determine that a
20 witness does have such an interest and you find that that
21 interest would bear upon that particular witness'
22 credibility or believability.

23 And you may also consider whether or not the testimony
24 of any witness is strengthened, or is it weakened by other
25 testimony or other evidence during the trial of the case?

Jury charge

1 Now, during the course of this trial you have heard
2 certain evidence that related to one or more of the
3 witnesses having convictions for certain types of criminal
4 offenses.

5 Now, ordinarily convictions for criminal offenses are
6 not allowed to be permitted or introduced during the trial
7 of the case because it's not relevant to any issue that the
8 jury has to determine.

9 But where a witness has convictions for particular
10 types of offenses, evidence of those convictions may be
11 introduced during the trial of the case, that is during
12 that witness' testimony.

13 But that evidence is admitted for a limited purpose.
14 And the purpose of the admission of that type of evidence
15 is for you to consider it in your assessment as to that
16 particular witness' credibility or believability as a
17 witness, that is the inherent probability or reliability of
18 that witness' testimony.

19 So where that evidence has been admitted you may
20 consider it if you find it probative on that particular
21 point. In other words, if you think those types of
22 convictions are probative on that witness' credibility,
23 that is the issue of that witness' credibility, then you
24 may consider it for that purpose. But you are not to
25 consider it for any other purpose.

Jury charge

1 Now, also during the trial you've heard testimony from
2 a witness or more who has been qualified as an expert in a
3 particular field and has been permitted to testify in an
4 opinion form.

5 Ordinarily, lay witnesses aren't permitted to testify
6 in an opinion form. They can testify about facts that are
7 within their own knowledge of what they have perceived.
8 But where certain persons have special education or
9 training or experience with regard to a particular field,
10 then that person may be qualified as an expert in that
11 field. And where they are qualified, they may testify in
12 an opinion form.

13 Now, if you determine that a person who has been
14 qualified as an expert does not possess the sufficient
15 training, education, skill, experience, knowledge or did
16 not properly consider the facts that relate to this
17 particular matter, then you may reject that expert's
18 opinion in its entirety, or you may choose to believe some
19 portion of it and reject some other portion of it. You
20 must judge the credibility of expert-witness testimony just
21 as you do any other witness' testimony.

22 As the finders of the fact and as the judges of the
23 credibility of each witness you are permitted to believe as
24 much or as little of what a witness has testified to as you
25 deem is appropriate. And so, as I've stated, you can

Jury charge

1 believe everything that a witness testified to, you may
2 choose to believe none of it. You may believe one portion
3 of a witness' testimony and reject some other portion of
4 that same witness' testimony. In a given case you can
5 believe one witness as opposed to several, or several as
6 opposed to one.

7 But whatever your good judgment and common sense tells
8 you is the most believable and credible testimony is the
9 testimony you should accept. And you should reject any
10 testimony or other evidence that you find not to be
11 credible or believable. Again, your sole objective is to
12 simply reach the truth in the matter. By doing that you
13 will have fulfilled your obligations.

14 Now, while there are various forms of evidence such as
15 testimony, charts, maps, documents and other types of
16 physical exhibits, there are really only two types of
17 evidence. Either or both of those types of evidence may be
18 used to prove any fact in issue. And the two types of
19 evidence are direct evidence and circumstantial evidence.

20 Now, direct evidence is the testimony of a person who
21 testifies from actual knowledge of a fact. In other words,
22 it's testimony of a person who has perceived the existence
23 of some fact by using their senses and then they come into
24 court and they testify as to what they have previously seen
25 or heard or felt.

Jury charge

1 Circumstantial evidence, on the other hand, is the
2 proof of some other fact or set of facts which taken either
3 singly or collectively may prove the existence of a fact in
4 question as a necessary consequence, that is through an
5 inference.

6 And an inference is simply a deduction of fact which
7 may logically and reasonably be drawn from the proof of
8 some other fact or set of facts. In other words, you may
9 infer that a particular fact exists or that a particular
10 event occurred based upon the proof of sufficient factual
11 circumstances which would reasonably warrant your arriving
12 at such a conclusion.

13 The law however makes absolutely no distinction
14 between the weight or the value to be given to direct
15 evidence or to circumstantial evidence, nor is a greater
16 degree of certainty required of circumstantial evidence as
17 opposed to direct evidence.

18 Whatever the type of evidence used to prove any fact
19 in a case, you should consider all of the evidence
20 presented during the trial of this case. And after
21 carefully considering all of that evidence and weighing it
22 carefully in your minds, if you are not convinced of the
23 guilt of the defendant as to some charge beyond a
24 reasonable doubt, then you must resolve that doubt in his
25 favor and return a verdict of not guilty.

Jury charge

1 Now, as you know, you've got three separate and
2 distinct criminal offenses to consider in this case. Those
3 are murder, assault and battery with intent to kill and
4 armed robbery.

5 I'm going to instruct you on the law as it relates to
6 each of those separate and distinct offenses. I will first
7 instruct you on the law as it relates to the crime of
8 murder, followed by the law as it relates to the crime of
9 assault and battery with intent to kill; and then finally
10 with the law as it relates to the crime of armed robbery.

11 Now, murder is defined in the law in South Carolina as
12 the killing of any person with malice aforethought either
13 expressed or implied.

14 Now, in order for you to find the defendant to be
15 guilty of the crime of murder it would be necessary that
16 the evidence in this case has established to your
17 satisfaction beyond a reasonable doubt that the defendant
18 or an accomplice -- and the definition of accomplice will
19 be provided to you later on during this instruction -- but
20 either the defendant or an accomplice must have committed
21 some act or acts which proximately caused the death of the
22 decedent. And in this case that would be Lee Evans.

23 And further it must be proven that the killing was
24 done by the defendant or by that accomplice with malice
25 aforethought. Malice aforethought is an essential element

Jury charge

1 of the crime of murder.

2 Now, with regard to malice, malice is a term of art.
3 It's a term connoting an ill will and an intent to do harm.
4 It is a technical term importing wickedness and excluding
5 any just cause or legal excuse. It is something which
6 springs from depravity, from a heart devoid of social duty
7 and fatally bent on mischief.

8 Malice may be likewise defined as a state of mind
9 which indicates a formed purpose and design to do a
10 wrongful act under circumstances that exclude any legal
11 right or legal justification to commit the act.

12 Now, the words expressed or implied malice do not mean
13 different kinds of malice but simply the manner in which
14 malice may be shown to have existed, that is to say by
15 either direct evidence or by circumstantial evidence from
16 which malice may be inferred. And, as I've told you, an
17 inference is simply a deduction of fact which may logically
18 and reasonably be drawn from the proof of some other fact
19 or set of facts.

20 Now, malice may be expressed as where there is an
21 expressed threat to kill or where there is a lying in wait
22 or where the circumstances show directly that an intent to
23 kill was entertained by the person committing the homicide.

24 Malice may be inferred, though no expressed intent to
25 kill is proven by direct evidence, where the facts and the

Jury charge

1 circumstances which have been proven by the evidence in the
2 case satisfy you beyond a reasonable doubt that malice was
3 present in the mind of the slayer at the time that any
4 killing took place.

5 The existence of malice may be inferred from the
6 circumstances shown to have existed at the time of the
7 event. And you under the law are permitted to infer the
8 existence of malice from proof of an unlawful and an
9 intentional killing of another person without justification
10 or legal exist.

11 You are also permitted to infer the existence of
12 malice from proof of a wrongful intent to injure another
13 person through the infliction of serious bodily harm
14 indicative of a wicked or depraved spirit.

15 You are further permitted to infer the existence of
16 malice from the proof of the intentional use of a deadly
17 weapon in the infliction of any injury. You are also
18 permitted to infer the existence of malice from proof of
19 the intentional commission of an act which is inherently
20 dangerous to human life.

21 You are further permitted to infer the existence of
22 malice from proof of the intentional killing of another or
23 the intentional commission of a criminal act which results
24 in the death of another person during the commission of a
25 felony which is dangerous to human life or where the

Jury charge

1 circumstances of the crime create a substantial foreseeable
2 risk to human life. And under the law of South Carolina
3 armed robbery is classified as a felony.

4 You are also permitted to infer the existence of
5 malice from proof of the commission of acts which are so
6 reckless and so inherently dangerous to human life and
7 which are done in such a fashion to manifest a depravity of
8 mind signifying an extreme disregard for or an extreme
9 indifference to human life.

10 Now, even if the facts proven are sufficient to give
11 rise to an inference of malice, such an inference is simply
12 an evidentiary fact to be taken into consideration by you
13 12 jurors, along with all the other evidence in the case.
14 And you may give those inferences such weight, if any, that
15 you determine one should receive, if any.

16 Simply stated you are permitted to infer the existence
17 of malice from the proof of any one or more of those
18 circumstances that I have just described, as well as from
19 any other evidence in the case reasonably tending to prove
20 such a fact. But you are in no way required to do so.

21 The state is required to prove malice, just as it must
22 prove any other essential element of the offense charged.
23 And it is for you 12 jurors to determine whether or not the
24 evidence in this case establishes the existence of malice
25 beyond a reasonable doubt. And you must determine whether

Jury charge

1 or not malice has been established based upon your
2 consideration of all of the evidence introduced during the
3 trial of this case and any reasonable inferences that might
4 be derived from that evidence.

5 It is also essential that there exist not only malice
6 but it must also be malice aforethought. Now, the law does
7 not require that malice must exist for any appreciable
8 length of time before the commission of an act which
9 proximately results in the death of another. Indeed, it
10 might be conceived at the very moment that the fatal act is
11 committed.

12 It is sufficient in the law so long as the state
13 proves beyond a reasonable doubt both the existence of
14 malice and the commission of an act or acts by the
15 defendant or an accomplice which proximately causes the
16 fatal result.

17 Now, while the state must prove beyond a reasonable
18 doubt that a killing did occur and that that killing was
19 accompanied by malice aforethought either expressed or
20 implied in order to establish the crime of murder, it is
21 not necessary that the state prove any motive for such a
22 killing, although there may be evidence relating to that
23 fact introduced during the trial of this case.

24 Now, the next indictment charges the defendant with
25 the crime of assault and battery with intent to kill. And

Jury charge

1 of course that offense relates to the purported victim
2 being Leon Young.

3 With regard to that criminal offense you are
4 instructed that an assault is defined as the unlawful
5 attempt to do violence or injury to the person of another
6 where there is the present ability to complete the attempt
7 by way of a battery.

8 A battery is defined in the law as the unlawful and
9 the intentional touching or the striking of the person of
10 another by the person committing the assault or by any
11 object put in motion by that person. That is it is the
12 completion of an act doing violence or injury to the person
13 of another.

14 A battery may be further defined as the carrying into
15 effect of an assault by using or applying force to the
16 person of another, and it doesn't matter how slight it
17 might be, in a rude, angry, resentful or unlawful manner
18 without just cause or legal excuse.

19 An assault and battery with intent to kill is defined
20 in the law as an unlawful act of a violent nature towards
21 the person of another, the natural tendency of which is to
22 cause death or result in serious bodily harm and the act is
23 accompanied with malice aforethought either expressed or
24 implied.

25 Now, the definition that I previously gave you

Jury charge

1 regarding malice aforethought as it relates to the crime of
2 murder is the same. And that also applies to the crime of
3 assault with intent to kill.

4 Criminal intent is also a necessary element of any
5 crime that has to be proven beyond a reasonable doubt. And
6 with regard to the crime of assault and battery with intent
7 to kill, although the crime is referred to as an assault
8 and battery with intent to kill, and while in some cases a
9 specific intent to kill may be established by the evidence
10 in the case, it is not necessary that a specific intent to
11 kill be proven in order for the defendant to be found
12 guilty of the crime of assault and battery with intent to
13 kill.

14 There must however be proven beyond a reasonable doubt
15 that the defendant did commit an assault and battery, the
16 natural tendency of which was to result in death or serious
17 bodily harm, that that act was accompanied by malice
18 aforethought and the defendant maintained at least a
19 general criminal intent in order for the offense of assault
20 and battery with intent to kill to be proven.

21 Now, intent is the state of a person's mind that
22 directs his actions towards a specific object or goal.
23 Intent would necessarily include those consequences that
24 represent the very purpose for which an act is done, as
25 well as those consequences that are known to be

Jury charge

1 substantially certain to result from an act, even though
2 not actually or specifically intended.

3 A criminal intent is the state of a person's mind that
4 operates jointly with the commission of an act in the
5 commission of a criminal offense.

6 Criminal intent is a mental state of conscious
7 wrongdoing in contrast to an act that is done
8 inadvertently, mistakenly, accidentally and without any
9 criminal intent.

10 Intent may be proven by the acts, declarations and
11 conduct of the defendant, as well as any other
12 circumstances which are established by the evidence in the
13 case from which you might naturally and reasonably infer
14 such intent.

15 The final indictment charges the defendant with the
16 crime of armed robbery. Armed robbery necessarily includes
17 the lesser offenses of robbery and of larceny. So I'll
18 define for you the term larceny, then robbery, then armed
19 robbery.

20 Now, larceny is commonly referred to and known as
21 stealing. Larceny is defined in the law as the taking and
22 the stealing and the carrying away of the personal property
23 of another with the intention of depriving the true owner
24 of use and possession of his or her property and with the
25 intent of converting that property to the taker's own use

Jury charge

1 or purposes.

2 Robbery is commonly referred to as a larceny by force.
3 Robbery is defined in the law as the taking and the
4 stealing and the carrying away of the personal property of
5 another having any value whatsoever from the person or from
6 the presence of any person without his or her consent and
7 with an intent to steal by using force or violence or by
8 threatening the use of force or violence in order to
9 accomplish the larceny.

10 Forcing a person to surrender property from fear and
11 intimidation or the taking of property from a person
12 through the use of force or violence or the threat of the
13 use of force or violence with an intent to steal is robbery
14 under the law.

15 Section 16-11-330 of the Code of Laws of South
16 Carolina provides that any person who commits the crime of
17 robbery while armed with a pistol, a dirk, a slingshot,
18 metal knuckles, a razor or any other deadly weapon is
19 guilty of the crime of armed robbery.

20 Now, you are further instructed that when a person is
21 charged with the commission of a crime they may be
22 convicted of that crime as a principal or as an accomplice.

23 Now, an accomplice is a person who knowingly and
24 voluntarily and with common intent with the principal
25 offender unites with the principal offender in the

Jury charge

1 commission of the crime. An accomplice is also often
2 referred to as an aider or an abetter.

3 Now, in this case the state alleges that the
4 defendant, David Roy Lynch, is guilty of the crimes of
5 murder, assault and battery with intent to kill, and armed
6 robbery either as a principal or an accomplice.

7 So in that regard you are instructed that where two or
8 more people act together with a common intent, and where
9 they act with a common purpose and they combine, conspire,
10 plan or otherwise agree to the commission of a crime, each
11 person who is present to aid, abet, assist or otherwise
12 participate in the commission of that crime is equally
13 guilty as any other participant in the crime.

14 The act of one is deemed to be the act of all. Any
15 person who joins with another or others to accomplish an
16 illegal purpose is held to be criminally responsible for
17 everything done by any other person which occurs as a
18 natural and probable consequence of the acts done pursuant
19 to and in furtherance of the common plan and purpose.

20 Therefore where two or more persons are acting
21 together and they are aiding, abetting, assisting and
22 participating with each other in the commission of a crime,
23 the acts of one become the acts of all, or the hand of one
24 is deemed to be the hand of all. And all are equally
25 guilty of any crime accomplished thereby.

Jury charge

1 Now, in order to be guilty of a crime as an accomplice
2 one must be present at the scene of the crime with the
3 intention of aiding, abetting, assisting and participating
4 in the commission of the crime, and the crime must have
5 been completed.

6 Now, prior knowledge by the defendant that some person
7 is intending to commit a crime without more is not
8 sufficient to make him guilty of the crime of which he may
9 be shown to have knowledge. And, likewise, the mere
10 presence of the defendant at the scene of a crime or in
11 close proximity thereto even with knowledge that another is
12 intending to commit a crime is not sufficient standing
13 alone to prove the defendant guilty of any crime under the
14 theory of accomplice liability.

15 In order for a defendant to be found guilty of a crime
16 under the legal theory of accomplice liability or as an
17 aider and an abetter it must be proven beyond a reasonable
18 doubt that the defendant was present at the scene of the
19 crime and with the intention of aiding, abetting, assisting
20 and participating in the common plan or scheme which
21 culminates in the commission of that crime.

22 Now, under a theory of accomplice liability two or
23 more persons may be guilty of an unlawful homicide even
24 though only one person actually commits the act which is
25 directly responsible for the death of some other person.

Jury charge

1 Where two or more persons combine, conspire or agree
2 to the commission of a felony such as armed robbery and in
3 the commission of criminal acts done in furtherance of that
4 crime a homicide is committed by one of the participants
5 which is a natural and probable consequence of that acts
6 done in furtherance of a common plan, then all who are
7 present and participating in those criminal acts are
8 equally as guilty and are equally as responsible for the
9 death as the one who actually committed the fatal act.

10 Now, the common purpose may not have been to kill
11 anyone at all. But if during the commission of a felony a
12 homicide is committed by one of the participants which is a
13 natural and probable consequence of the acts done in
14 furtherance of the common plan, then each person who is
15 present and aiding, abetting and assisting and
16 participating in the common design are equally guilty of
17 any homicide committed by the act of any one of those
18 participants. As I've stated, the act of one becomes the
19 act of all, the hand of one is deemed to be the hand of
20 all.

21 And with regard to the crime of armed robbery, a
22 criminal intent is also a necessary element. The criminal
23 intent, as I have previously defined that term for you, is
24 the same, applies the same to the crime of armed robbery as
25 it does to any other criminal offense.

Jury charge

1 Now, you are instructed further, and I emphasize to
2 you, that the fact that a defendant does not testify during
3 the trial of a criminal case is not a fact which may be
4 considered by you 12 jurors in any way during your
5 deliberations or in your determination as to whether or not
6 the defendant's guilt has been proven beyond a reasonable
7 doubt, because, as I've stated, the burden is never upon a
8 defendant to prove that he is not guilty or to prove that
9 he is innocent, because in many cases that might not be
10 possible.

11 And therefore you may not consider in the slightest
12 degree against a defendant the fact that the defendant does
13 not testify during the trial of the case. That may not
14 enter into your deliberations. It may not enter into your
15 determination as to whether or not his guilt has been
16 proven beyond a reasonable doubt. Nor may you even discuss
17 that fact while you are engaged in your deliberations in
18 this case.

19 Now, madam forelady and ladies and gentlemen of the
20 jury, I am not in any way concerned with what your
21 decisions are, but I do tell you that the verdicts of the
22 jury must be unanimous. That is all 12 of you must be in
23 agreement before any decision may be returned to the Court
24 as it relates to a particular indictment.

25 Now, as I told you, madam forelady, you will have

Jury charge

1 three indictments in the jury room on which you are to
2 indicate the jury's unanimous decision.

3 You can deliberate the case in any kind of fashion and
4 order you wish to. But I'm simply going to ask that once
5 the jury has reached a unanimous decision as to a
6 particular indictment, I want you to indicate that decision
7 on the back of the indictment.

8 You'll see on the back of the indictment in the lower
9 left-hand corner there is the word verdict. And it's
10 beneath that word that you're going to be asked to indicate
11 that unanimous decision, whatever it is. And then sign
12 your name as the foreperson and place the appropriate date
13 on it.

14 In this case with respect to each of the separate
15 indictments, you have two potential verdict forms.

16 If the state has proven each of the essential elements
17 of the crime alleged beyond a reasonable doubt, then your
18 verdict would be guilty.

19 If the state has failed to prove any one or more of
20 the essential elements of any crime alleged beyond a
21 reasonable doubt, then your verdict must be not guilty.

22 So whatever that decision is, guilty or not guilty,
23 indicate it on the back of the indictment as requested,
24 sign your name as the foreperson.

25 Now, as I told you at the beginning, you have got

Jury charge

1 three separate charges. You've got two potential verdict
2 forms as to each indictment.

3 Your verdicts in this case may be the same. They may
4 be different. That will depend upon your determination of
5 fact and then your application of the law to the facts as
6 you determine them to be.

7 Now, during your deliberations there may be some
8 smokers. I don't know if we have any smokers. But if you
9 want to smoke during jury deliberations, you can. But you
10 can't smoke in the jury room. You have to go outside in
11 order to accomplish that purpose.

12 So if anybody wants to smoke, knock on the door. Let
13 the bailiff know you need to go outside and smoke. And
14 they'll make those arrangements.

15 You are instructed however that deliberations may not
16 take place unless all 12 jurors are present so that all may
17 participate in those deliberations.

18 Also, I don't know how long your deliberations will
19 take. That will depend upon your review of the evidence
20 and your consensus of opinion in that respect.

21 But it's now 11:30. And if you get to a point during
22 your deliberations that you want to have lunch, if you'll
23 let the bailiff know of that fact, he'll get the clerk to
24 come into the jury room and take your lunch orders.

25 So far as your lunch plans are concerned, it usually

Jury charge

1 takes about an hour to order the lunch, have it prepared
2 and brought to the jury room for the jury's benefit. So
3 just keep that timetable in mind.

4 So when you go back if you want to order lunch
5 immediately, let us know. If you want to wait a while,
6 we'll just wait to hear from you so far as when you desire
7 to order lunch if you get to a point where you do want to
8 order lunch. But, again, it takes about an hour to
9 accomplish that task.

10 During deliberations you may in your discussions have
11 some disagreement or question about the facts or the
12 evidence that's been presented during the trial.

13 I am never permitted to answer any question as it
14 relates to a question of fact or about evidence or lack of
15 evidence. I'm not permitted to answer those questions.

16 If you believe, if you do have a question like that
17 and you think that the question can be easily answered by
18 having testimony replayed, then we can bring you back into
19 the courtroom for that purpose..

20 We don't have transcripts available. We can't print
21 out a transcript of a witness' testimony. But if you want
22 to have a witness' testimony replayed, let the bailiff know
23 of that fact, and we'll bring you back into the courtroom
24 for the purpose of having that testimony replayed in whole,
25 or in part far that matter.

Jury charge

1 If during your deliberations you ever have a question
2 about the law that's applicable in the case, I can always
3 answer those questions. So if you need an additional
4 instruction, explanation or clarification of the law that I
5 have provided you, let me know of that fact. And I can
6 always bring you back to reinstruct you or provide an
7 additional explanation or a clarification of the law that's
8 applicable.

9 If at any time, madam forelady, you have a question
10 you need to direct to me, just write it on a piece of
11 paper, give it to the bailiff, and he'll provide it to me,
12 and I'll respond accordingly.

13 Now, with that I'm going to ask you to retire to your
14 jury room. But do not yet begin your deliberations. I've
15 got some matters I'll need to address with the lawyers.

16 If I don't need to bring you back for any reason, I'll
17 send word by way of the bailiff that you may begin your
18 deliberations. In that event he'll bring to the jury room
19 all of the exhibits which have been introduced.

20 And to you, madam forelady, he'll also bring the
21 indictments which serve as the verdict forms.

22 So please retire to your jury room, but do not begin
23 deliberations until I send you word to do so.

24 Mr. Dean, you're welcome to stand, but stay with me in
25 the courtroom, please, sir.

Jury charge

1 THE ALTERNATE: Stand here?

2 THE COURT: Yes.

3 (Whereupon, the jury retired to deliberate at
4 11:30 a.m.)

5 (Whereupon, the alternate juror was excused.)

6 THE COURT: Are there any exceptions taken to the
7 instruction or requests for additions to the instruction by
8 the state?

9 MR. BULSA: No, Your Honor.

10 THE COURT: By the defendant?

11 MR. ROBINSON: No exceptions, Your Honor.

12 THE COURT: All right. Let me ask y'all to verify the
13 exhibits before they go back, please.

14 (Pause.)

15 THE COURT: All right. All of the exhibits are
16 accounted for.

17 MR. BULSA: Yes, sir.

18 THE COURT: Okay.

19 MR. ROBINSON: Yes, sir, Your Honor.

20 THE COURT: Send them back. Here are the verdict
21 forms.

22 Ask the jury to begin deliberating and notify us when
23 they've reached a conclusion.

24 We will be at ease while the jury is deliberating.

25 (Whereupon, a recess was taken.)

Jury charge

1 THE COURT: All right. Bring the jury in, please.

2 (Whereupon, the jury returned to the courtroom at
3 2:05 p.m.)

4 THE COURT: All right. Madam forelady, I have your
5 request for an additional instruction or clarification of
6 the instruction as it relates to accomplice liability.
7 There's also a question about, regarding an interpretation
8 by a juror of the law.

9 Let me preface by saying, as I previously stated,
10 those involved in the trial of a case have different roles.
11 The prosecution presents a case; the defense defends a
12 case.

13 The jury decides the facts of the case based upon your
14 consideration of the evidence in the case. And my
15 obligation is to provide you with the law that's applicable
16 in a case.

17 Now, under your oath as a juror you have an obligation
18 to fairly consider and evaluate all of the evidence in the
19 case and to fairly make a determination of facts based upon
20 your common sense examination of the evidence.

21 You must also under your oath as a juror accept the
22 law as the Court provides it to you as being the law that
23 is applicable in this particular case. And, as I've
24 stated, you can't concern yourself with what you thought
25 the law was or what you think it ought to be.

Jury charge

1 You take the law as I provide it to you as being the
2 law that is applicable in this case. And then you apply it
3 to the facts as you 12 jurors determine those facts to be
4 based upon your consideration of all of the evidence.

5 Now, with respect to the law as it relates to the
6 legal theory of accomplice liability, you have indicated
7 that you wish to have the law reheard regarding that theory
8 in reference to the assault and battery with intent to
9 kill.

10 Well, accomplice liability, the law as it relates to
11 accomplice liability, is the same as it relates to or in
12 reference to any crime.

13 So whether it be the crime of murder or armed robbery
14 or assault and battery with intent to kill, the law of
15 accomplice liability is always the same. So it applies to
16 this offense, just as it applies to any other offense.

17 Whether or not it applies at all will depend upon your
18 determination of fact in the case, whether you find a
19 principal or an accomplice, or you find neither.

20 But with regard to accomplice liability and the law of
21 aiding and abetting, you are instructed that when a person
22 is charged with a crime they may be convicted of that crime
23 as a principal or as an accomplice.

24 An accomplice is a person who knowingly and
25 voluntarily and with common intent with a principal

Jury charge

1 offender unites with that principal offender in the
2 commission of a crime. An accomplice is often referred to
3 as an aider or an abetter.

4 Now, in this particular case the state is alleging
5 that this defendant is guilty of the crimes of murder,
6 assault and battery with intent to kill and armed robbery
7 either as a principal or as an accomplice.

8 In that regard with respect to accomplice liability,
9 you are instructed that where two or more people act
10 together with a common intent and purpose and they combine,
11 conspire, plan or otherwise agree to the commission of a
12 crime, each person who is present to aid, abet, assist or
13 otherwise participate in the commission of that crime is
14 equally guilty as any other participant in the crime.

15 The act of one is deemed to be the act of all. So any
16 person who joins with another or others to accomplish an
17 illegal purpose is held to be criminally responsible for
18 everything done by any other person who is participating in
19 the criminal enterprise which occurs as a natural and
20 probable consequence of the acts done pursuant to and in
21 furtherance of the common plan and purpose.

22 Therefore where two or more persons are acting
23 together and they are aiding, abetting, assisting and
24 participating with each other in the commission of a crime,
25 the acts of one become the acts of all, or the hand of one

Jury charge

1 is deemed to be the hand of all. And all are equally
2 guilty of any crime which is accomplished thereby.

3 In order to be guilty as an accomplice in the
4 commission of a crime one must be present at the scene of
5 the crime with the intention of aiding, abetting and
6 assisting and participating in the commission of the crime,
7 and the crime must have been completed.

8 Prior knowledge by the defendant that some person is
9 intending to commit a crime without more is not sufficient
10 to make him guilty of the crime of which he may be shown to
11 have knowledge. And likewise the mere presence of the
12 defendant at the scene of a crime or in close proximity
13 thereto even with knowledge that another is intending to
14 commit the crime is not sufficient standing alone to prove
15 the defendant guilty of any crime as an accomplice.

16 In order for the defendant to be found guilty of a
17 crime under the legal theory of aiding and abetting it must
18 be proven beyond a reasonable doubt that the defendant was
19 present at the scene of the crime with the intention of
20 aiding, abetting, assisting and participating in the common
21 plan or scheme which culminates in the commission of the
22 crime.

23 Under a theory of accomplice liability two or more
24 persons may be guilty of an unlawful homicide, even though
25 only one person actually commits the act which is directly

Jury charge

1 responsible for the death of another.

2 When two or more persons combine or conspire or agree
3 to the commission of a felony such as the felony of armed
4 robbery, and in the commission of that crime criminal acts
5 are done in furtherance of the crime and a homicide is
6 committed by one of the participants which is a natural and
7 probable consequence of those acts done in furtherance of
8 the common plan, all who are present and participating in
9 the criminal acts are equally as responsible as the one who
10 actually committed the fatal act.

11 The same would apply to a criminal act during the
12 course of a criminal enterprise that does not actually
13 result in the death of an individual, such as where an
14 assault and battery with intent to kill is committed.

15 You may still be found guilty as an accomplice if you
16 are otherwise aiding, abetting, assisting and participating
17 in the common criminal enterprise and a person is seriously
18 injured as the results of the act of one of the accomplices
19 and such is a natural and probable consequence of the acts
20 committed pursuant to the common plan and scheme.

21 Now, with regard to the commission of an unlawful
22 homicide or an assault and battery with intent to kill, the
23 common purpose may have not been to kill or to harm anyone
24 at all. But if during the commission of a felony a
25 homicide is committed or one is harmed by one of the

Jury charge

1 participants which is a natural and probable consequence of
2 the acts done in furtherance of the common plan, each
3 person who is present aiding, abetting, assisting or
4 participating in the common design are equally guilty of
5 any criminal offense committed by the act of any one of the
6 participants. Under the law, again, the hand of one is the
7 hand of all, or the act of one is the act of all.

8 Now, I think that responds to the questions that have
9 been asked pursuant to the foreperson's question.

10 But I'm going to ask you to go back to the jury room.
11 If I did not answer the question that you were seeking a
12 response to, simply write it again or clarify it in some
13 fashion and I'll try to respond accordingly.

14 I think I have responded to the question. But if I
15 have not, you let me know. And I'll be happy to try to
16 clarify it further.

17 If at any time you have any additional questions about
18 the law that's applicable, please feel free to make that
19 inquiry. And I'll try to respond as best that I can.

20 So please retire to your jury room and continue with
21 your deliberations. Let me know if you have any additional
22 questions.

23 (Whereupon, the jury retired to deliberate at
24 2:15 p.m.)

25 THE COURT: Are there any exceptions taken to that

Verdict

1 additional instruction by the state?

2 MR. BULSA: No, Your Honor.

3 THE COURT: By the defendant?

4 MR. ROBINSON: No exceptions, Your Honor.

5 THE COURT: All right. We'll continue to be at ease
6 while the jury is deliberating.

7 (Question from the jury marked Court's Exhibit No. 1.)

8 (Whereupon, a recess was taken.)

9 THE COURT: I'm told the jury has reached a verdict.
10 Are we ready to receive it?

11 MR. BULSA: Yes, sir. Ms. Ganss --

12 THE COURT: Well, I can't keep track of y'all. Y'all
13 are going to have to stay. I'm going to chain y'all to the
14 table.

15 Bring the jury in, please.

16 (Whereupon, the jury returned to the courtroom at
17 2:37 p.m. to report its verdict.)

18 THE COURT: Madam forelady, have you and your fellow
19 jurors reached a unanimous decision as to each of the
20 separate indictments?

21 THE FOREPERSON: Yes, sir, we have.

22 THE COURT: Have you indicated those decisions on the
23 back of the indictment as requested?

24 THE FOREPERSON: Yes, I have.

25 THE COURT: Did you sign your name as the foreperson

Verdict

1 and place the date on it?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: If you will, please hand those forms up by
4 way of the bailiff.

5 All right. You may publish the verdicts.

6 THE CLERK: State of South Carolina, County of
7 Spartanburg, State of South Carolina vs. David Roy Lynch,
8 Indictment No. 2005-GS-42-3565, indictment for assault and
9 battery with intent to kill, the verdict is guilty. It is
10 signed by the foreperson and dated today's date.

11 As to Indictment 06-GS-42-3826, the State of South
12 Carolina, County of Spartanburg, the State of South
13 Carolina vs. David Roy Lynch, indictment for armed robbery,
14 the verdict is guilty. It is signed by the foreperson and
15 dated today's date.

16 Indictment 2005-GS-42-3566, the State of South
17 Carolina, County of Spartanburg, the State vs. David Roy
18 Lynch, indictment for murder, the verdict is guilty. It is
19 signed by the foreperson and dated today's date.

20 Ladies and gentlemen of the jury, if this is your
21 verdicts and still your verdicts, please raise your right
22 hand.

23 (Whereupon, all responded in the affirmative.)

24 THE CLERK: So say you all.

25 THE COURT: Does the defendant wish to have the jury

Sentence

1 polled?

2 MR. ROBINSON: No, sir, Your Honor.

3 THE COURT: All right. Any other matters to be
4 addressed with the jury present?

5 MR. BULSA: Not by the state.

6 MR. ROBINSON: None by the defense, Your Honor.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: May I have the sentencing sheet?

9 MR. BULSA: Yes, sir.

10 THE COURT: Mr. Robinson, does the defendant decline
11 to sign the sentencing sheet?

12 MR. ROBINSON: No, sir, Your Honor. When I had him
13 sign this, he signed over here. He's not --

14 THE COURT: You can unhook one so he can sign it.

15 (Pause.)

16 THE COURT: All right. Mr. Robinson, anything you
17 would like to tell me before sentence is imposed?

18 MR. ROBINSON: May it please the Court, Your Honor.

19 On behalf of the family of Mr. Lynch, we appreciate
20 the Court's professionalism and appreciate the way the
21 trial was conducted.

22 Your Honor, he is a young man. He -- obviously, the
23 Court had a chance to listen to the facts in this case. He
24 was obviously at the wrong place at the wrong time with
25 these individuals.

Sentence

1 He, he chose to go to trial because he's always
2 thought he was innocent in this case. And he never
3 meant -- he didn't know Mr. Evans, had never met him in his
4 life. And he's very, he's very sorry he was in the wrong
5 place at the wrong time. He is very sorry about that part
6 of it.

7 What we would ask the Court, for mercy in this case.
8 And I would ask that on behalf of the family, Your Honor,
9 for mercy in this matter.

10 THE COURT: All right. Mr. Lynch, is there anything
11 you would like to add to what your lawyer has told me?

12 THE DEFENDANT: Sir, I mean --

13 THE COURT: Would you like to tell me anything before
14 I impose a sentence?

15 THE DEFENDANT: No, no, no, Your Honor..

16 THE COURT: Okay. Anything further on behalf of the
17 state?

18 MR. BULSA: He does have a criminal history if Your
19 Honor would like to hear it.

20 Back in June of 1997 he pled guilty to possession of
21 less than a gram of crack cocaine; also, in June of 1997 he
22 pled guilty to a common law conspiracy; and in December of
23 1997 he pled guilty to a failure to stop for a blue light;
24 2000, giving false information.

25 On the drug charge and conspiracy charge he received a

Sentence

1 youthful offender sentence.

2 It appears that in October of 2000 he was convicted of
3 resisting arrest. And subsequent to that he had a parole
4 revocation in 2003. Those are the way the dates read off
5 incident -- off the rap sheet.

6 I believe once he was arrested on these charges he may
7 have been sent down to the department of corrections also.

8 THE COURT: Is that all?

9 MR. BULSA: Yes, sir.

10 THE COURT: Mr. Robinson, does Mr. Lynch agree or
11 disagree with the state's recitation of his prior criminal
12 history?

13 THE DEFENDANT: Your Honor, that is, that's correct.

14 THE COURT: Okay. All right. On Indictment
15 2005-3566, the State vs. David Roy Lynch, an indictment for
16 murder, wherein you have been found guilty by the jury of
17 that offense, the Sentence of the Court is you, David Roy
18 Lynch, be confined to the South Carolina Department of
19 Corrections for the period of your natural life.

20 Indictment --

21 UNIDENTIFIED PERSON: Then put me out, man.

22 (Pause for noise in the courtroom.)

23 THE COURT: Quiet. Take him into custody. Take them
24 out, take them out.

25 THE OFFICER: Anybody else need to go out?

Sentence

1 THE COURT: All right. On Indictment 2006-3826, an
2 indictment for armed robbery, wherein the jury has found
3 you guilty of that offense, Sentence of the Court is you,
4 David Roy Lynch, be confined to the South Carolina
5 Department of Corrections for a period of 30 years.

6 On Indictment 2005-3565, an indictment for assault and
7 battery with intent to kill, wherein you have been found
8 guilty by a jury of that offense, the Sentence of the Court
9 is you, David Roy Lynch, be confined to the South Carolina
10 Department of Corrections for a period of 20 years.

11 Mr. Lynch, you have a right to appeal the decision of
12 the jury and the Sentence of the Court. You must file any
13 notice of your intentions to appeal those decisions within
14 ten days of today's date. Mr. Robinson will discuss that
15 with you.

16 THE DEFENDANT: Your Honor, may I ask you a question,
17 sir?

18 THE COURT: Yes, sir.

19 THE DEFENDANT: Is that natural life plus 50?

20 THE COURT: No, sir. The other two sentences are
21 concurrent with the life sentence.

22 THE DEFENDANT: Oh. Thank you, Your Honor.

23 END OF REQUESTED TRANSCRIPT OF RECORD
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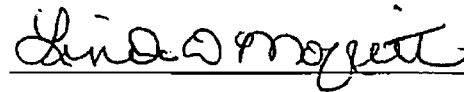
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th, 9th and 10th days of January 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 9, 2009



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgDavid Roy Lynch #290223

Full name and prison number (if any) of Applicant

A.K.A. Roy David Mc Dowell

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-42. 5550APPLICATION FOR
POST-CONVICTION RELIEF

M. HOSE BLACKLEY

2011 DEC 12 PM 4:48

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SPARTANBURG COUNTYINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence Spartanburg Ct. of
Gen Sessions
3. Name(s) of co-defendant(s) (if any) Alicia Margaret Lemke, Jessica
Nicole Holmes, David Weatherspoon, and Antwan Sallers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 05-GS-42-3565 / Assault and Battery w/intent to kill
 - (b) 05-GS-42-3566 / Murder

- (c) 06-GS-42-3826/Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 10, 2007 / 20 years - concurrent to Murder
- (b) January 10, 2007 / life
- (c) January 10, 2007 / 30 years - concurrent to Murder also
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Ct. of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted May 1, 2011 - Filed May 24, 11
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No 2011-UP-251
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) / A

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SPARTANBURG COUNTY
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- (c) N / A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial counsel
- (b) Ineffective Assistance of Appellate counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) SEE ATTACH SHEET(S)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for Reconsideration of Sentence
- ii. P.C.R. 2007-CP-42-4260
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Ct. of Gen. Sessions
- ii. Ct. of Common Pleas
- iii. _____
- iv. _____

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SPARTANBURG COUNTY

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(c) the disposition thereof:

- i. Denied
- ii. Dismissed "Without" prejudice
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. May 5, 2009
- ii. Aug 31, 2009
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. SEE: Motion for Reconsideration
- ii. SEE: Order of Dismissal
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Scott Robinson, Esq. P.O. Box 463 Beekens, SC 29671
 ii. Kenneth P. Shabel 104 N. Daniel Morgan Ave Spart. SC 29306
 iii. Joseph L. Savitz III P.O. Box 11589 Columbia, SC 29211-1589

~~iv.~~ _____

- (b) the proceedings at which each such attorney represented you:

i. Trial, Sentencing and motion for reconsideration
 ii. P.C.R.
 iii. Appeal

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

19. State clearly the relief you seek in filing this application:

New trial, and any other relief that I may be entitled to, and or the court deems just and fair.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Roy D. McDowell Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Roy D. McDowell Jr.

SWORN to and subscribed before me this 08 day of December, 2011.

J. C. Franklen (L.S.)
Notary Public

My Commission Expires: 12-16-2015

FILED
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SPARTANBURG COUNTY
2011 DEC 12 PM 4:49
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Roy David Mc Dowell Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

08 day of December, 2011.


Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 12 PM 4:49
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2011-CP-42-5550
David Roy Lynch #270223,	)	
A.K.A Roy David McDowell,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on December 12, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the August 2005 term of General Sessions for assault and battery with intent to kill (ABWIK) (05-GS-42-3565), and murder (05-GS-42-3566). In January 2006, the Applicant was indicted for one count of armed robbery (06-GS-42-3826). The Applicant was represented by Scott D. Robinson, Esquire. On January 10, 2007, the Applicant proceeded to trial and was found guilty of all charges as indicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for a period of life for murder, and concurrent terms of thirty (30) years for armed robbery and twenty (20) years for ABWIK.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was filed by Joseph L. Savitz, III, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal.

State v. Lynch, Op. No. 2011-UP-251 (S.C. Ct. App. Filed May 24, 2011). The Remittitur was issued on June 10, 2011.

2007-CP-42-4260

The Applicant filed an application for post-conviction relief on November 29, 2007. However, The Honorable J. Mark Hayes, II dismissed the application without prejudice on August 31, 2009, because the Applicant's direct appeal was pending in the South Carolina Supreme Court at the time.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, and
2. Ineffective assistance of appellate counsel.¹

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent submits that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must

¹ Respondent notes that the Applicant answers Question 11 (a-c) in the application with "See Attach Sheet(s)." At the time of making its Return, Respondent had not received any attachments to the application alleging any facts to support the grounds set out in Question 10.

prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry v. State, *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel.

However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests an evidentiary hearing be held.

Respectfully submitted,

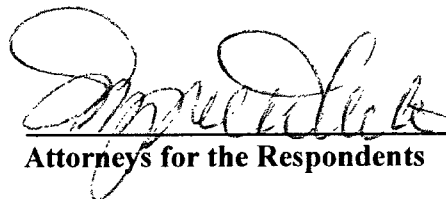
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By:


Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 11 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

David Roy Lynch,

2011-CP-42-5550

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Travis S. Greene, Esquire
Law Office of Travis S. Greene, PC
104 N. Daniel Morgan Avenue, Suite 108
Spartanburg, South Carolina 29306-2363



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 11th day of September, 2012.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 DAVID ROY LYNCH,)
 5 APPLICANT,) TRANSCRIPT
 6 VS.) OF
 7 STATE OF SOUTH CAROLINA,) RECORD
 8 RESPONDENT.) 2011-CP-42-5550

9
 10 March 25th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

15
 16 A P P E A R A N C E S:

17 LEAH B. MOODY
 18 ESQ.
 Attorney for the Applicant

19 SUZANNE WHITE
 20 ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

DAVID ROY LYNCH

Direct examination by Ms. Moody 10

Cross-examination by Ms. White 38

SCOTT ROBINSON

Direct examination by Ms. White 47

Cross-examination by Ms. Moody 56

Closing by Ms. Moody 80

Closing by Ms. White 83

Certificate 87

P R O C E E D I N G S

THE COURT: All right. We're on the record in the case of the -- of David Roy Lynch also known as Roy David McDowell, Applicant, against the State of South Carolina.

I'll hear from the State concerning the case.

Ms. White.

MS. WHITE: Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. WHITE: Case Number 2011-CP-42-5550. Mr. Lynch filed this originally in December 12th, 2011. He's represented today by Ms. Leah Moody.

Mr. Lynch was indicted in August of 2005 for assault and battery with intent to kill and murder charges. He was also indicted January of 2006 for one count of armed robbery. He proceeded to trial where he was represented by Scott Robinson. On January 10th, 2007, he was found guilty of all charges as indicted, and since -- sentenced, excuse me, to a period of life for murder and concurrent terms of 30 years for armed robbery and 20 years for assault and battery with intent to kill. There was an Anders brief filed on his behalf and the convictions were affirmed.

He filed this application. Originally there was a, an application filed in 2007, but it was dismissed without prejudice because his direct appeal was pending at the time.

1 So then this application was filed alleging ineffective
2 assistance of trial counsel and appellate counsel. Ms.
3 Moody did inform me that he's going forward on issues
4 related to a Batson motion, failure to quash the indictment
5 for failures to -- failure to note all the elements of the
6 offense in the indictment, failure to object to failing to
7 request a mistrial or curative instructions, and failure to
8 object to the Trial Judge's instructions on malice.

9 We did have the case scheduled last time and,
10 unfortunately, Mr. Lynch had a fainting, fainting episode or
11 spell at which time we had to continue the case and he was
12 removed by medical personnel, and I will turn it over to Ms.
13 Moody at this time.

14 THE COURT: All right. Good morning, Ms. Moody.
15 How are you?

16 MS. MOODY: Good morning, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. MOODY: Please the Court?

19 THE COURT: Yes, ma'am.

20 MS. MOODY: As the State indicates, as Ms. White
21 indicates, those are the issues that the client has alleged
22 in his PCR application.

23 I wanted to put on the record the last time we were
24 going forward he did have a incident where he fell and an
25 ambulance was called in to take him to the hospital. I'm

1 not really sure exactly what the result of that was, but the
2 judge did move for a continuance. At that time I was gonna
3 move for a continuance on the matter, and I'm not sure
4 whether he has an issue that he wants to present to the
5 Court other than the issues that have been presented through
6 his PCR application.

7 THE COURT: All right. Well, I'll inquire of him if
8 he's ready to go forward.

9 MS. MOODY: Okay.

10 THE COURT: All right. Thank you, ma'am.

11 Mr. Lynch or Mr. McDowell, which do you wish to be
12 addressed as?

13 THE APPLICANT: My name is Roy David Lynch, sir.

14 THE COURT: All right. Thank you.

15 If you'll raise your right-hand to the best of your
16 ability.

17 (WHEREUPON, the Applicant was placed under oath at this
18 time.)

19 THE COURT: You can be seated.

20 (Applicant complies.)

21 THE COURT: Thank you, sir.

22 Mr. Lynch, my understanding is that you had some either
23 physical problems or some problems at your last hearing.

24 Have you recovered from that?

25 THE APPLICANT: I have.

1 THE COURT: Are you able to go forward with your
2 hearing today?

3 THE APPLICANT: I am.

4 THE COURT: Do you suffer from any conditions, mental,
5 physical, nervous, or otherwise, that would prevent you from
6 being able to reason or to make good decisions today?

7 THE APPLICANT: I don't.

8 THE COURT: Have you taken or used any drugs,
9 medications, or other substances that might have that
10 effect?

11 THE APPLICANT: I have not.

12 THE COURT: Okay. So you do understand what the
13 hearing is about?

14 THE APPLICANT: I do.

15 THE COURT: And you indicated you're able to proceed.
16 Is that still true?

17 THE APPLICANT: Correct.

18 THE COURT: All right. Now, Mr. Lynch, your attorney
19 indicated that there might be some matters that you would
20 like to take up directly with the Court.

21 THE APPLICANT: I would.

22 THE COURT: This is your opportunity to do so if you'd
23 like.

24 THE APPLICANT: I would like to have my issues amended
25 to my PCR please. So that's amended.

1 Also, Your Honor -- oh, stand up. I'm sorry.

2 Also, Your Honor, I would like to have the issues ruled
3 upon individually instead of as a whole if anyway possible.

4 THE COURT: All right. Well, first of all, let's
5 address the question of amendment of your application.

6 THE APPLICANT: Yes, sir.

7 THE COURT: In, in what fashion or how do you want to
8 amend that application?

9 THE APPLICANT: Well, I would like to connect it on --
10 I have some paperwork, four issues that I would like to
11 argue.

12 THE COURT: Do you have copies of that, Ms. Moody?

13 Ms. Moody, he's pointing down like it's -- there's a
14 document there or something.

15 MS. MOODY: Yes, sir, Your Honor, that's what Ms. White
16 spoke of, those issues, and it might have been one that was
17 left out.

18 In his application, on Page 3, it just states generally
19 the ineffective assistance of trial counsel, ineffective
20 assistance of appellate counsel. When it indicates, on
21 Number 11, to see the attached sheets, the attached sheets
22 would be his applications -- documents that were not filed.
23 But most clients think that you have to file them. I simply
24 put the State on notice of the specific issues because when
25 he files for ineffective assistance of counsel.

1 THE COURT: All right. So, so what are -- issues are
2 you intending to go forward on today?

3 MS. MOODY: Batson, an issue under Batson, an issue
4 dealing with Constitutional deficiency for failing to move
5 to quash the indictment.

6 Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 MS. MOODY: Ineffective assistance of counsel during
10 trial when trial counsel failed to object, moved for a
11 mistrial, or request curative instructions due to the
12 solicitor's improper comment during, during the closing
13 argument where the solicitor untruthfully stated the, the
14 Applicant or codefendant had pled guilty under the hand of
15 one is the hand of all theory. That's one issue, the third
16 issue---

17 THE COURT: So that's a failure to object to an
18 improper argument made by the solicitor?

19 MS. MOODY: Yes, sir.

20 THE COURT: All right.

21 MS. MOODY: And then the last one is ineffective
22 assistance of trial counsel where the counsel failed to
23 object to the -- another failure to object, but the basis is
24 to the Trial Judge committing reversible error charging the
25 jury.

1 THE COURT: And that -- I believe that charge was
2 concerning malice.

3 Is that what I heard Ms. White say?

4 MS. MOODY: Yes, sir. Yes, sir, malice, and then there
5 is, since the Applicant's defense was mere presence, I think
6 that's the defense that they presented by way of -- that's
7 the strategy the attorney took.

8 THE COURT: All right. Now, Mr. Lynch, did you hear
9 your attorney go over the four issues that she believes you
10 wish to have addressed?

11 THE APPLICANT: I have, sir.

12 THE COURT: Are those the ones you're talking about?

13 THE APPLICANT: They are.

14 THE COURT: Is there anything that she left out?

15 THE APPLICANT: No, sir.

16 THE COURT: Okay. So you'd like to have a ruling on
17 each of those issues?

18 THE APPLICANT: Please.

19 THE COURT: Okay. Generally we would do that. So --
20 now, anything else you'd like to address before we go
21 forward?

22 THE APPLICANT: No, sir.

23 THE COURT: Okay. Thank you. You can be seated.

24 All right. State ready to proceed?

25 MS. WHITE: Yes, Your Honor.

David Roy Lynch - Direct examination
by Ms. Moody

1 THE COURT: Applicant ready to proceed?

2 MS. MOODY: Yes, sir, Your Honor.

3 THE COURT: All right. You may call your first
4 witness, Ms. Moody.

5 MS. MOODY: Your Honor, we would call Mr. David Roy
6 Lynch to the stand.

7 THE COURT: Sir, if you'll come forward to my left and
8 be sworn in.

9 THE APPLICANT: Yes, sir.

10 THE COURT: Sir, when you get over here, if you'd place
11 your left-hand on the Bible and raise your right to the best
12 of your ability.

13 DAVID ROY LYNCH, being first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat, sir, and, once you're
16 comfortable, please state your name for the record.

17 THE WITNESS: My name is Roy David McDowell, Junior aka
18 David Lynch.

19 THE COURT: Thank you very much.
20 Counselor, your witness.

21 MS. MOODY: Okay. Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. MOODY:

24 Q Mr. -- which one?

25 A McDowell.

David Roy Lynch - Direct examination
by Ms. Moody

1 Q McDowell.

2 Mr. McDowell, please inform the Court where you're
3 currently incarcerated.

4 A I'm currently incarcerated at McCormick Correctional
5 Institution.

6 Q And when did you begin your incarceration?

7 A 2005.

8 Q Okay. And what was the basis for that incarceration?

9 A A murder one charge, an armed robbery charge, and
10 assault and battery with intent to kill charge.

11 Q And, with those charges, did you proceed to trial?

12 A Yes.

13 Q Okay. And who was your counsel?

14 A Scott Robinson.

15 Q Okay. And when Mr. Robinson represented you, was he
16 your original counsel?

17 A Yes, he was.

18 Q Okay. Now, did you have an opportunity to meet with
19 Mr. Robinson?

20 A We met on maybe two or three occasions.

21 Q Okay. And on those occasions, what, if anything, did
22 you-all discuss?

23 A Well, we discussed what my charges were and basically
24 when I was gonna be scheduled to go to trial.

25 Q Okay. Did you ever have an opportunity to discuss a

David Roy Lynch - Direct examination
by MS. Moody

1 plea?

2 A Yes, at a later date he told me that a plea bargain
3 was, was gonna be given to me for 30 years in exchange for
4 testimony.

5 Q Okay. And obviously did you not testify in that?

6 A I did not testify cause I stated to him that I didn't
7 do the crime. So I felt as though I should go to trial.

8 Q Okay. And so you-all proceeded to a trial?

9 A No.

10 Q Correct?

11 A No, prior, prior to that I talked to my family and I, I
12 told -- I let them know that I didn't like Scott Robinson's
13 performance. So then I placed a motion in to the chief
14 administrative judge saying I wanted him removed. The chief
15 administrative judge wrote me back, said that he would be
16 removed, but they never removed him, then we proceeded to
17 trial.

18 Q Okay. So before you got to have a trial on this case
19 you expressed your dissatisfaction with your attorney?

20 A I did.

21 Q Okay. And what you're telling the Court is nothing
22 happened, you proceeded to trial?

23 A Yeah, the chief administrative judge wrote me back. He
24 said that he would be removed from my case, but he wasn't.
25 The week after that we went to trial.

David Roy Lynch - Direct examination
by Ms. Moody

1 Q Okay. Did you ever have a hearing before the chief
2 administrative judge regarding your representation by Mr.
3 Robinson?

4 A No, he simply wrote me back.

5 Q Okay. So what, if anything, did you-all do to prepare
6 for your trial?

7 A We discussed, we discussed the strategy where I told
8 him that the motive was not armed robbery. The motive was
9 actually my codefendant having sex with another female that
10 was involved in the case. That, that's what he discussed.

11 Q Okay. So let's be clear on that.

12 You're saying the motive -- are you, are you saying
13 that was your motive?

14 A No, I had no motive. I wasn't the party who did the
15 shooting. The shooter actually was having a dispute with
16 the person who he shot---

17 Q All right. So the victim---

18 A ---over the female that was involved in the case. When
19 I let Scott Robinson know that, he never -- he failed to
20 investigate.

21 Q Okay. So what you're saying is the victim and the
22 codefendant had a disagreement over a female?

23 A Correct.

24 Q Okay. So as far as you were concerned, you weren't
25 involved in that disagreement?

David Roy Lynch - Direct examination
by Ms. Moody

1 A No.

2 Q So when you, you indicated just a second ago that Mr.
3 Robinson didn't investigate --

4 A Correct.

5 Q -- and what investigation did you want him to do?

6 A Well, I would like -- I, I wanted for him to find the
7 female party that was involved so then she could give
8 statement and testimony to the fact that that, that was the
9 reason why the shooting occurred.

10 Q Okay. And this female, what is her name?

11 A Martina Parks.

12 Q Okay. And was Ms. Martina Parks involved in your
13 trial?

14 A No, she was -- she never came to trial. But she was
15 actually on the witness list for the State.

16 Q Okay. So now let's go forward here.

17 So, after that week, you gave Mr. Robinson the issues
18 or the information so that he could investigate and you're
19 stating here he did not investigate that?

20 A He did not.

21 Q Okay. So when you went to trial, you proceeded to
22 trial, knowing that you had a plea offer out there, you
23 chose to go forward with a trial?

24 A Correct.

25 Q Okay. And, at the trial, you didn't -- well, let's go

David Roy Lynch - Direct examination
by Ms. Moody

1 to your issues that you stated that you wanted the Court to
2 consider separately. The first issue being a Batson motion.

3 Can you explain to the Court what you -- what your
4 issue was with the Batson motion?

5 A Well, my issue with the Batson motion was actually I
6 never picked any juror. Before, before trial, before trial,
7 he gave me a piece of paper with names on it. When we came
8 before the jury, actually he picked every juror. I don't
9 know exactly how that went. But he -- I never like knew
10 which juror was who. He never explained to me what was
11 going on. He actually sat down and picked each juror. So
12 actually he picked my jury.

13 Now---

14 Q Well---

15 A ---upon that time -- okay.

16 Q Let's, let's slow up.

17 So when you say you didn't get to pick a jury, were you
18 present for the jury selection?

19 A I was present.

20 Q Okay.

21 A I was present.

22 Q And then you said you didn't know who the jurors were.
23 What do you mean by that?

24 A I had any -- no information on -- like, like he never
25 explained to me who was what, what was they occupation.

David Roy Lynch - Direct examination
by Ms. Moody

1 It's like basically he sat me down and he picked the jury.

2 Q Did you see any paperwork as relates to the jurors?

3 A The day before I did. I seen it. When I seen him
4 again he took the paperwork back and he picked the jury.

5 Q Okay. Now, where are your originally from?

6 A Yonkers, New York.

7 Q Okay. So this was your first experience in Court in
8 South Carolina?

9 A Yeah. Well, I had a Y.O.A. sentence. This is my
10 first---

11 Q Trial?

12 A Yeah, major charge, you know.

13 Q But was this your first trial?

14 Was that---

15 A Yes.

16 Q In South Carolina?

17 A Yes, it was.

18 Q All right. So you indicate in your, as one of your
19 issues, the Batson motion, the Batson hearing, to determine
20 whether the solicitor used preemptory challenges to exclude
21 a juror. Juror Number 43.

22 A Yes.

23 Q Okay. And what -- can you explain to the Court what
24 you, what your issue with that is?

25 A Well, I was given an all white jury. Number 43, Number

David Roy Lynch - Direct examination
by Ms. Moody

1 43 was the only African-American.

2 Q And what happened with Number -- Juror 43?

3 A He was struck.

4 Q And did your -- are you telling -- explain to the Court
5 what your issue is---

6 A Well---

7 Q --when you say Batson?

8 A Well, well, when my issue -- my issue is that, once
9 this juror was struck, he never objected to me having that
10 juror being struck, me having an all white jury. He never
11 objected to anything. He just went along with, with
12 everything was going on, and, throughout the trial, he did
13 the same thing. He, he wasn't -- he wouldn't never
14 objecting to things.

15 Q Well, let's just stay with this issue cause you want
16 the Court to---

17 A All right.

18 Q ---rule on these separately.

19 So you're saying that, during the jury selection, you
20 wanted, at the end of the jury selection, you wanted your
21 attorney to challenge the composition of the jury?

22 A I did.

23 Q Okay. And did you tell your attorney that you wanted
24 him to challenge it?

25 A I did. I actually pointed out that I was given an all

David Roy Lynch - Direct examination
by Ms. Moody

1 white jury. He looked at me. That's it.

2 Q All right. So there was no objection put on the
3 record, no Batson motion hearing?

4 A No.

5 Q Okay. Is there anything else you want to tell the
6 Court about this particular issue?

7 A No, not at this time.

8 Q Okay. Now, your, your second issue is your counsel was
9 Constitutionally deficient for not quashing the indictment.

10 Can you explain to the Court what you mean as far as
11 quashing the indictment?

12 what was the problem?

13 A Well okay. The, the, the actual indictments, the, the
14 numbers don't match up with, with the actual -- how can I
15 put it?

16 The numbers don't add up with the actual guideline of
17 the charge.

18 Q So---

19 A So---

20 Q Are you talking about the Code Section?

21 A Correct. The Code Section doesn't match up. So the
22 fact is that, you know, I shouldn't have been indicted under
23 that particular code and the reason why it should of been
24 quashed is because it doesn't match up.

25 Q Okay. So when you're saying you shouldn't of been

David Roy Lynch - Direct examination
by Ms. Moody

1 indicted under that particular code, what indictment --
2 well, what code---

3 A Under armed robbery.

4 Q ---section should you of been indicted under?

5 A Under armed robbery.

6 Q Okay. And, in fact, you were indicted under what
7 charge?

8 A I was, I was indicted under armed robbery, but that's
9 not the, the, the code that goes to the armed robbery. It's
10 like it doesn't match up. It's like the armed robbery
11 warrant is not correct at all. But my, my former attorney,
12 Scott Robinson, should of seen is this the reason why I
13 wanted him to get it quashed or thrown out.

14 Q So the warrant, you just now testified about the
15 warrant.

16 Do you realize the warrant and the indictment are two
17 different documents?

18 A Which, whichever one, whichever one has the actual
19 serial numbers on, that's the one that I'm talking about.

20 Q Okay. So like you're using terms that the indictment
21 number and then the indictment has on the indictment the
22 Code Section in which you are being tried on.

23 A Right.

24 Q Okay. And then you're saying the warrant had a
25 different code section on it.

David Roy Lynch - Direct examination
by Ms. Moody

1 A I'm talking about the actual indictment.

2 Q I understand that.

3 So how do you know that that was the wrong section,
4 Code Section for armed robbery?

5 What made you think that that was the wrong Code
6 Section?

7 A Because I went to the law library and it says that it
8 was the wrong one as I'm stating in the paperwork.

9 Q I understand that, but I'm trying to get you to explain
10 so the Court -- you were charged for armed robbery and you
11 knew you were charged for armed robbery.

12 A Right.

13 Q You knew that you were going to trial on armed robbery
14 along with the other charges.

15 Right?

16 A Correct.

17 Q Okay. And so you're saying the only problem, in terms
18 of the indictment, was the Code Section that was listed on
19 the indictment, but it had armed robbery on the indictment?

20 A The caption, the caption on the armed robbery is not
21 correct. I don't actually know the correct terms for,
22 for -- that, that you're looking for. You know, I'm not---

23 MS. MOODY: Okay. I beg the Court's indulgence,
24 indulgence.

25 THE COURT: Yes, ma'am.

David Roy Lynch - Direct examination
by Ms. Moody

1 (Pause.)

2 MS. MOODY: Your Honor, may I approach the witness?

3 THE COURT: Yes, you may.

4 Q Okay. Mr. Lynch, I'm gonna show you this document.

5 Do you recognize this document?

6 A I do.

7 Q Okay. Do you know what this is?

8 A Yeah.

9 Q Okay. Can you state on the record what it is?

10 A It's a warrant.

11 Q No.

12 A Oh, it's an indictment. Okay.

13 Q Okay. So when you said you noticed that, on the
14 indictment, that the Code Section was incorrect, are you
15 talking about this South Carolina Code Section 16-11-330(A)?

16 A I will need my other paperwork that I gave you, my
17 actual argument.

18 Q So at some point there was an indictment?

19 THE COURT: Sir, do you need to step down and get
20 whatever you're -- you have at the desk?

21 Do you have it at the counsel table, what you're
22 talking about?

23 MS. MOODY: He gave me paperwork, Your Honor. So --.

24 THE COURT: Okay.

25 MS. MOODY: To compare it.

David Roy Lynch - Direct examination
by Ms. Moody

1 A Right here. Seventeen -- this right here.

2 All right. The elements, the elements in this doesn't
3 match with that.

4 Q So you're saying that the elements, under the
5 indictment --

6 A Yeah.

7 Q -- that the Court or that the State proceeded on
8 against you did not match the elements in the actual
9 indictment that was presented to the---

10 A Right.

11 Q ---jury?

12 A Right.

13 Q Okay. And what element -- do you need to see this?

14 what element was -- would you say -- are you saying did
15 not match?

16 A Right here in the caption.

17 Q Well, you need to read to that to the---

18 A Okay. The indictment or information does not have
19 expressly alleged each element of the crime if the statute
20 violated, violated or referred to an informational
21 indictment and the missing element is set forth in the
22 statute. However, a reference to the statute in class of
23 crime in the caption of the information is not part of
24 information and can not supply missing initial elements in
25 the information.

David Roy Lynch - Direct examination
by Ms. Moody

1 Q So you're saying, in the indictment that reads, and I
2 showed you this indictment -- can you read that indictment
3 allegations?

4 A Roy David Lynch did, did, in Spartanburg County, on or
5 about December 30th, 2004, rob Lee Evans while armed with
6 a pistol and a deadly weapon. Violation 16-11-330 Code A.

7 Q Okay. Of --?

8 A Code -- the Code of Laws of South Carolina, 1976 as
9 amended.

10 Q Okay. And so what are you saying that is missing?

11 A Okay. What, what I'm saying is that -- oh, excuse me.

12 Okay. It, it did not -- it fails to allege aspiration.

13 The Applicant is convicted of armed robbery. The statute,
14 the statutory offense, the findings, armed robbery, while
15 armed with a pistol or deadly weapon, Code 11 -- 16-11-330.
16 Robbery's defined as the felonious or unlawful taking of
17 money, goods, and other personal, a value, person of
18 another, and presence by violating or putting such person in
19 fear.

20 So the caption, the caption is leaving out the
21 aspiration of, of, of the element meaning like, you know---

22 Q That you got any money?

23 A Right.

24 Q Okay.

25 A They had, they had no -- nothing. They ain't have none

David Roy Lynch - Direct examination
by Ms. Moody

1 of that. They don't have any money, anything. It's not,
2 it's not saying enough.

3 Q Okay. So you're saying that the indictment is not
4 sufficiently stating what you robbed -- what the armed
5 robbery was---

6 A Precisely.

7 Q ---other than what you've read---

8 A Precisely.

9 Q ---in terms of it says that you robbed Lee Evans with
10 an armed -- armed with a pistol, a deadly weapon, but it
11 doesn't say what you took from him?

12 A It, it doesn't say what I took, anything. It's not,
13 it's not descriptive.

14 Q Okay. And so this is what you wanted your attorney to
15 object to?

16 A Precisely.

17 Q All right. And so you indicated, you indicated this
18 during trial?

19 A I indicated this prior to the trial. During the trial
20 I would talk to him about, you know, different things that I
21 saw such as the jury. He --.

22 Q Okay. So back up for a second.

23 You didn't necessarily have the indictment with you
24 when you talked about the case?

25 A No. But I told him, when we -- upon us, you know,

David Roy Lynch - Direct examination
by Ms. Moody

1 meeting I explained to him that armed robbery was not the
2 motive. So when I seen the armed robbery warrant, I
3 definitely told him armed robbery was not the motive.

4 Q Okay. So let me just simplify this and make sure I
5 understand what you're trying to convey to the Court.

6 You're saying that you, you didn't go there to rob
7 Mr. Evans?

8 A No.

9 Q Okay. And so you told him that you were not there to
10 rob Mr. Evans?

11 A I did.

12 Q Okay. And that you knew -- what, if anything, did you
13 know about robbing Mr. Evans?

14 A Nothing. The, the evidence shows that nobody went
15 there to rob Mr. Evans.

16 Q No, no, I'm talking about when you first talked to him
17 about your case, and you told him you were not involved in
18 it cause you, you keep saying motive, and I want you, I want
19 the Court to be clear on that, that there -- was there a
20 plan to go there and do something to Mr. Evans?

21 A No.

22 Q Okay. So what you're saying is that you were not there
23 to rob Mr. Evans and you didn't take anything from
24 Mr. Evans?

25 A Nobody did.

David Roy Lynch - Direct examination
by MS. Moody

1 Q Well, I'm talking about you.

2 A Oh no.

3 Q Okay. And so, when you conveyed that to your attorney,
4 he knew that going into the trial?

5 A Yeah. Yes, he did. He knew that I wanted him to run
6 investigation on Martina Parks and bring her forth so that
7 she could show while my codefendant was there.

8 Q Now let's stay precisely on the issues that you want
9 the Court to decide.

10 You're talking about the armed robbery indictment?

11 A Correct.

12 Q That you were not there to rob anybody, that was never
13 any kind of plan for you, and you particularly did not rob
14 Mr. Evans?

15 A Right.

16 Q Okay. And so what you're saying is, through your
17 application, is you wanted your attorney to, to object to
18 the indictment based on it did not fairly or it did not
19 adequately state what the State was going forward or it
20 didn't complete the offense of armed robbery?

21 A Correct.

22 Q Okay. Is there anything else as to armed robbery --

23 A No.

24 Q -- that your attorney didn't address with the
25 indictment?

David Roy Lynch - Direct examination
by Ms. Moody

1 A No.

2 Q Okay. Is there anything else you want to tell the
3 Court about that issue?

4 A No.

5 Q Okay. Now, your third issue that you presented, you
6 indicate that your counsel was ineffective during the trial
7 when he failed to object or move for mistrial or request
8 curative instructions due to the solicitor's improper
9 comment during the closing argument.

10 Can you explain to the Court what you mean by that?

11 A Well, I was on a separate trial, not a joined trial,
12 and the solicitor was saying that how I'm guilty because my
13 codefendant is guilty and that's in the paperwork.

14 Q Okay. And so, when that occurred, did you say anything
15 to your attorney during the trial?

16 A Yeah, I -- when, when -- the whole, the whole time that
17 we was at the trial I was saying things to him. He wasn't
18 listening to anything I was saying. But, at that time, I
19 knew that what the solicitor said affected me greatly.

20 Q How did it affect you?

21 A Because he -- because I was on a separate trial, not a
22 joined trial. He said that I'm guilty because my
23 codefendant is guilty. He painted this picture. He never
24 objected to any, any of that.

25 Q And so, when you say that he didn't object, that wasn't

David Roy Lynch - Direct examination
by Ms. Moody

1 placed on the record. He just ignored that issue.

2 A Yes, he did.

3 Q Okay. And you feel that that affected you with the
4 jury?

5 A Definitely. Definitely do.

6 Q Okay. Is there anything else you want to tell the
7 Court on that?

8 A I feel as, I feel as though Scott Robinson, he, he
9 didn't preserve any of my issues by failure to object
10 throughout the trial.

11 Q All right. Well, we're gonna come to that when we talk
12 about how it affected you completely.

13 But is there anything else that you wanted to say about
14 the failure to object on the solicitor's comments?

15 A I do not.

16 Q Okay.

17 THE COURT: Ms. Moody, can I -- I have not read the
18 transcript at this time. I always do that after I have the
19 hearings.

20 But is he objecting to the argument being made at his
21 trial of hand of one hand of all?

22 Is that the argument he's referring to?

23 MS. MOODY: Yes, sir, Your Honor.

24 THE COURT: And that was an argument made by the
25 solicitor and he feels it should of been objected to?

David Roy Lynch - Direct examination
by Ms. Moody

1 MS. MOODY: Yes, sir.

2 THE COURT: I understand now. Thank you.

3 You may proceed.

4 MS. MOODY: All right. Thank you, Your Honor.

5 Q Now, your fourth issue, you indicate that trial counsel
6 was ineffective during the trial when he failed to object
7 when the Trial Judge committed reversible error, error by
8 charging the jury on multiple evidentiary inferences of
9 malice since the State was proceeding on the theory of a
10 accomplice liability and the Applicant's defense was one of
11 mere presence. Well, your defense was one of mere presence.

12 Can you explain to the Court what you mean by that
13 issue?

14 A Well, I mean he didn't object to the, to the Trial
15 Judge. The Trial Judge said that I was malice. He pointed
16 at me. The jury left out. They came back in. They asked
17 what was the hands of one the hands of all. He proceeded --
18 the Trial Judge proceeded to say that they have to find me
19 guilty under the hands of all, under accomplice liability,
20 if I lied in wait.

21 This -- the Trial Judge was just saying this different
22 things, and, and Scott Robinson was not defending me at all.
23 He wasn't objecting to any of these. My, my, my defense was
24 mere presence. Me saying, you know, I was there, but I had
25 no knowledge of what was gonna happen. He never objected

David Roy Lynch - Direct examination
by Ms. Moody

1 to, to the judge saying that I was malice or anything.

2 Q Okay. So were you -- you stayed in the courtroom the
3 entire time that any matters were taken up on your case?

4 A I did.

5 Q Okay. And before the jury charge, do you recall the
6 Court discussing the instructions to the jury?

7 A No, I do not. We, we had the trial. Left out for some
8 hours. They came back in and they asked what was the hands
9 of one the hands of all. The judge presided proceeded to
10 point at me, say things. He never objected to anything. He
11 let him say everything.

12 Q Okay. And so did you have an opportunity -- well, what
13 opportunity did you have to discuss what would happen as far
14 as the jury charge with Mr. Robinson?

15 A Well, well, at that time, I asked Mr. Robinson should I
16 say anything about it. He said that I should not testify
17 due to my prior record.

18 Q Okay. So this is like during the trial. This is
19 before -- while, you know, the State is presented their case
20 and then it came to a point where you were allowed to
21 present your defense.

22 A Correct.

23 Q Okay. And so what you're speaking of is whether or not
24 you should of taken the stand to testify on your own behalf?

25 A Correct. I was -- I definitely wanted to testify on my

David Roy Lynch - Direct examination
by Ms. Moody

1 own behalf. But Scott Robinson told me that that was a bad
2 idea.

3 Q Okay. So---

4 THE COURT: Ms. Moody?

5 Ms. Moody, I don't know that he raised this issue at
6 the---

7 MS. MOODY: He didn't.

8 THE COURT: ---beginning of the hearing.

9 MS. MOODY: I'm trying to get him to the -- take him
10 through the process.

11 THE COURT: Well, is he, is he now raising -- is he
12 amending his application to claim that he was prevented from
13 testifying?

14 MS. MOODY: No, he said he talked about his -- he just
15 stated, stated that his counsel told him it was not his best
16 interest to testify---

17 THE COURT: Well, I would---

18 MS. MOODY: --based on his prior record.

19 THE COURT: I would expect that the Trial Judge
20 inquired specifically of your client and had him make that
21 decision.

22 MS. MOODY: Right. I'm not getting into that. I'm
23 just---

24 THE COURT: Okay.

25 MS. MOODY: I'm trying to get to the point---

David Roy Lynch - Direct examination
by MS. Moody

1 THE COURT: All right. Excuse me.

2 MS. MOODY: ---where they had discussions---

3 THE COURT: I just wanted to know if I needed to add an
4 issue to my list of issues.

5 Go ahead.

6 MS. MOODY: Oh, no, sir.

7 THE COURT: All right. He wants the decisions
8 specifically on the issues.

9 MS. MOODY: Right.

10 THE COURT: Okay. Go ahead.

11 Q So, Mr. McDowell, the conversation that you had about
12 what was gonna happen -- let me put it like this. What was
13 gonna happen next in your trial, you had an opportunity to
14 present evidence. Your lawyer advised you not to get on the
15 stand and testify and obviously you talked to the judge
16 about your right to testify.

17 But did you have anymore discussion about what would
18 happen at the end of the trial before the judge charged the
19 jury?

20 A No.

21 Q Okay. Were you present when your attorney or did you
22 hear your attorney discuss the jury charges with the judge
23 and the solicitor?

24 A No, I did not hear any of that. During the trial he
25 would go up to the, to the judge.

David Roy Lynch - Direct examination
by Ms. Moody

1 Q No, no. I'm talking about towards the end.

2 A Uh-huh. (Affirmative).

3 Q Okay. When they, when they talked about what -- how
4 they were gonna proceed at the end of the trial, was there
5 any discussion about the jury charges?

6 A To me?

7 Q With you.

8 A No.

9 Q So you didn't know what the judge was gonna charge the
10 jury?

11 A I did not.

12 Q Okay. And you didn't have the opportunity to discuss
13 or your attorney did not discuss or explain to you the
14 process of the jury charge?

15 A He did not.

16 Q Okay. So, again, you didn't know what the judge would
17 be saying?

18 A No, I did not know what the judge was saying. But once
19 he said what he said I asked him why is you let him say
20 that.

21 Q Okay.

22 A I was basically, during the trial, asking him to object
23 to things I had.

24 Q Okay. Well, let's, let's focus -- I want you -- I'm
25 trying to narrow you down to the jury charge because that's

David Roy Lynch - Direct examination
by Ms. Moody

1 the issue that you presented to the Court.

2 So when you asked him about it, why is he saying these
3 things, what, if anything, did your attorney explain to you?

4 A He, he didn't explain anything to me. He just looked
5 at me.

6 Q Okay. Now, was there any other kind of conversation
7 about the jury charge after the judge talked to the jury?

8 A No, he, Scott Robinson, he wouldn't talk to me. I'm --
9 see, during the trial was the same failure that I was
10 getting before the trial. He said certain things. He
11 doesn't, he doesn't -- he's not, he's nonverbal. So that's
12 why I was complaining about I didn't even want to go to
13 trial with him.

14 Q Okay.

15 A Even after the jury charge, he still wouldn't say
16 anything to me.

17 Q All right. So, as to this specific issue, there was no
18 discussion --

19 A No.

20 Q -- about the jury charge?

21 A No.

22 Q Okay. Is there anything else you want to say about
23 this particular issue?

24 A No.

25 Q Okay. Now, you were getting ready to go into earlier

David Roy Lynch - Direct examination
by MS. Moody

1 how you felt it harmed you or prejudiced you as to your
2 case.

3 Can you please tell the Court what was it you feel the
4 prejudice was in your representation with Mr. Robinson?

5 A From the, the beginning, the failure to, to investigate
6 parties that were involved in the case. When I could, when
7 I -- ma'am?

8 Q So we're talking about your prejudice:

9 Like how did it affect you ultimately?

10 A It, it affected me in many ways because I was not given
11 a, a -- I was not given a fair trial. I mean he told me
12 don't testify. I wanted to testify. When the jury was all
13 white, I complained and pointed out to him. He did not
14 object to that. He failure (sic) to, to run an
15 investigation from before -- prior to the trial when he knew
16 that I had the paperwork in to relieve him as my counselor,
17 he still proceeded. He wrote back to the chief
18 administrative telling him that he's ready to proceed.

19 Q Okay. You've already testified all to that.

20 I'm asking you to tell the Court specifically how you
21 feel that it affected you negatively:

22 A I was misrepresented. I think that I could of been
23 represented better.

24 Q And what would of -- the result have been?

25 A The result, the result would of been that I --

David Roy Lynch - Direct examination
by Ms. Moody

1 ultimately I would of been found not guilty. I'm not guilty
2 of the charge. I mean --.

3 Q Right.

4 But you understand the Court needs to understand how
5 you were affected, how you were prejudiced by his
6 representation. The things that you said he did not do, you
7 need to be able to say that here now clearly so the Court
8 will know how it affected you.

9 A It affected me because I was found guilty on all three
10 charges. It affected me because I was misrepresented,
11 misrepresented (sic). It affected me because the -- my
12 former attorney, Scott Robinson, failed to object to, to
13 things to preserve at my issues for a later date. It
14 affected me because---

15 Q So then when you say a later date, you're -- are you
16 suggesting that it affected your appeal rights?

17 A It definitely. It did. It did. During my trial I
18 asked the presiding judge for appeal, and he told me that my
19 attorney had ten days to file it. He did not file my
20 appeal. I had to get an appeal at a later date. He, he --
21 that's, that's the whole thing. He was not even filing
22 anything I asked him to --

23 Q Okay.

24 A -- even when the judge told him.

25 Q So did he file a notice of appeal on your behalf?

David Roy Lynch - Direct examination
by Ms. Moody

1 A No, he -- when I, when I asked for an appeal, the judge
2 said he had ten days. He never even, he never even filed
3 that. It's like he was giving me minimum effort even---

4 Q Okay.

5 A ---after the trial.

6 Q Okay. And so all of those things that you've stated
7 here is you feel that you wouldn't of been found guilty, and
8 had Mr. Robinson performed in terms of making certain
9 objections and making challenges, you feel that you wouldn't
10 of been found guilty?

11 A I feel as though I would not been found guilty if he
12 had of made certain challenges throughout the trial during
13 things that was said, the jury, allowing me to testify on my
14 behalf, things like this, yeah. I, I feel as though the
15 outcome would of definitely been different.

16 Q Okay. And so, today, through your PCR application,
17 what relief are you seeking from the Court?

18 A I was seeking -- I was seek (sic) relief of anything
19 the Court felt fit. You know, I don't really know what to
20 ask for. But I would definitely ask for better
21 representation than I, than I had.

22 Q In your application, on Page 6, it asked you to state
23 clearly the relief you seek in filing this application.
24 Your clocked copy of your PCR application indicates a new
25 trial and any other relief that I may be entitled to and/or

David Roy Lynch - Direct examination
by MS. Moody

1 the Court deems just and fit.

2 A Correct.

3 Q And so that's fair to say what you are asking the Court
4 for here today?

5 A That is fair to say, ma'am.

6 Q Okay. Is there anything else you would like to tell
7 the Court that relates to your issues that you've presented?

8 Is there any other information you feel the Court needs
9 to have?

10 A No, ma'am, I don't have anymore issues.

11 Q Okay. Thank you.

12 No further questions for this witness.

13 Please answer any questions the State may have.

14 THE COURT: All right. Ms. White, you may
15 cross-examine the witness.

16 MS. WHITE: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. WHITE:

20 Q Mr. McDowell, you, you acknowledged that Mr. Robinson
21 filed a motion to sever your case from your codefendants.

22 Is that right?

23 A Correct.

24 Q Did you have a chance to talk with him about that prior
25 to filing -- him filing that motion?

David Roy Lynch - Cross-examination
by Ms. White

1 A I did. He talked to me about the severance of my
2 codefendant.

3 Q Okay. And obviously in that you agreed that that would
4 be more beneficial to you to have your case tried
5 separately?

6 A I would not agree to that. Not, not never knowing what
7 a joined trial is because the outcome of a separate trial
8 was not good. So maybe a joined trial would of been better.
9 So I would not agree with that.

10 Q Okay. So you can't say whether or not, but at the time
11 the decision was made that that would be a good option for
12 you?

13 A The -- yes, the decision was made by him.

14 Q Okay. And your attorney filed several pretrial
15 motions, didn't he, on your behalf?

16 A He did.

17 Q And several were motions to suppress some information
18 about whether or not like you left the area following the
19 shooting and some things like that.

20 Is that right?

21 A Correct.

22 Q Okay. He also did a motion to suppress some bullets
23 that had been taken and your statement.

24 Is that right?

25 A Correct.

David Roy Lynch - Cross-examination
by Ms. White

1 Q Okay. And, and that was an -- I'm sorry. I don't know
2 if I said North Carolina. But it was referencing you going
3 to George and Florida after the shooting.

4 Is that right?

5 A Correct.

6 Q Okay. And the hearings were held on those.

7 Do you recall what the judge ruled on those?

8 A I do not.

9 Q Okay. The judge ultimately ruled that he would have to
10 address that information outside of the jury's presence,
11 that the State couldn't present the evidence of you going to
12 Georgia and Florida without presenting it to him first.

13 Is that right?

14 Do you recall that?

15 A I do.

16 Q Okay. And then do you recall that, that the, the
17 bullets were also I believe suppressed?

18 A He -- oh, okay. The motion that you're referring to,
19 he filed a lot of motions. Maybe, maybe I seen about eight
20 of them. I don't know what the outcome of them were.

21 Q Okay.

22 A Cause he never like sat me down and said hey, you know,
23 I got this suppressed, I got that suppressed. He never did
24 any of that.

25 Q Okay. All right. But you were there during the

David Roy Lynch - Cross-examination
by Ms. White

1 motions when they were argued at the trial, weren't you,
2 prior to the beginning of the trial?

3 A At the beginning of the trial the motions were argued?

4 Q Yes.

5 A No, ma'am, they, they went to the bench and were saying
6 things. It wasn't verbally like out loud, you know, this is
7 suppressed or that is suppressed.

8 Q Okay. But, but if you recall -- if you had a chance to
9 look at the transcript, at the beginning of the transcript,
10 on the record, your, your, Page 40, your attorney starts off
11 with saying that a motion he filed with the Court was the --
12 trying to prevent the State from using the fact that you had
13 gone to Florida with Mr. Salters and also had traveled to
14 North Carolina.

15 So you weren't -- that was on the record presented in
16 front of the Court with you present, was it not?

17 A If you say it was on the transcript it was.

18 Q Okay. So you wouldn't dispute that if several things
19 are in the transcript that that's probably what was
20 presented out loud in the Court to the judge?

21 A Yeah.

22 Q Okay. In regards to the jury selection, you said that
23 you weren't given an opportunity to pick a jury.

24 You weren't familiar though with the individuals that
25 were part of the jury pool, were you?

David Roy Lynch - Cross-examination
by Ms. White

1 A No, I wasn't familiar with any of them. But I was not
2 given an opportunity to pick any of them either.

3 Q And you've never -- you said you never had been
4 involved in a trial before.

5 Right?

6 A No.

7 Q Okay. But Mr. Robinson, based on his experience, he
8 was the one that ultimately picked the jurors.

9 Is that correct?

10 A Yes, he, he picked the jurors. He never made it a
11 joint effort.

12 Q Okay. But he made the decision, along with the, the
13 solicitor from the State, as to who they would move to
14 strike and who they would accept as jurors?

15 A I guess. He never told me anything.

16 Q Okay. And you did acknowledge you were present there
17 though---

18 A I was there.

19 Q ---you were -- okay. You also said you talked about
20 the strategy. The strategy that you discussed with Mr.
21 Robinson that was also presented to the jury was one of mere
22 presence, that you just happened to be there, but were not
23 aware of any of the activities that were gonna go on.

24 Is that right?

25 A Correct.

David Roy Lynch - Cross-examination
by Ms. White

1 Q Okay. And that was presented to the jury through
2 cross-examination.

3 Is that not correct?

4 A Correct.

5 Q Okay. Your concern about the indictment. You
6 mentioned the asportation element of the armed robbery. But
7 you were aware that you were proceeding on an allegation of
8 armed robbery at trial.

9 Is that correct?

10 A Yeah, I was, I was presented with an armed robbery
11 warrant.

12 Q Okay.

13 A An indictment.

14 Q Okay. And in regards to the closing arguments, your
15 concern was about the testimony regarding the fact that
16 Mr. Salters had previously pled guilty under the theory of
17 hand of one hand of all.

18 Is that correct?

19 A Right.

20 Q Okay. And that evidence had been presented throughout
21 the trial, had it not?

22 A I wouldn't, I would -- what particular evidence are you
23 referring to, ma'am.

24 Q And I was gonna say that was not very clear. Not
25 evidence that he had pled guilty, but evidence of

David Roy Lynch - Cross-examination
by Ms. White

1 Mr. Salters involvement in his shooting of the victim.

2 Is that right?

3 A No, not during the whole trial. It's like closing
4 arguments, he, he just said that.

5 Q So you're saying that there was never mention of Mr.
6 salters being involved in this case during the trial?

7 A Yeah, it was briefly here and there. But never like a
8 full statement like at the end.

9 Q Okay. And the testimony, or through cross-examination,
10 was, was pointed out that you were never alleged to be the
11 shooter.

12 Is that right?

13 A Yes, that is correct.

14 Q Okay. In regards to the charge having to do with
15 malice, and you said they came at -- the juror came back --
16 the jury came back with questions about accomplice liability
17 and hand of one hand of all.

18 There was no allegation that the shooting was a result
19 of self-defense, was it?

20 A I could not say that -- what, what was the shooting
21 because I'm -- I was not never the shooter.

22 Q Right.

23 But---

24 A I don't know what the---

25 Q ---Mr. Salters---

David Roy Lynch - Cross-examination
by Ms. White

1 A ---was---

2 Q There was no allegation from Mr. Salters that he had
3 shot this victim in self-defense?

4 A Mr. Salters was not present. So I, I couldn't tell you
5 if it was self-defense or it wasn't. Only he can, ma'am.

6 Q Okay. But in your -- I'm asking about your trial.

7 was there any evidence presented that the shooting had
8 been a result of a fight or something that had happened
9 where the victim was shot in self-defense?

10 A It could of been if, from the beginning, Scott Robinson
11 ran investigation.

12 Q Okay. So you---

13 A Maybe that evidence that you're asking for could of
14 been presented.

15 Q Okay. But you, you are not aware of any specific
16 evidence that showed that the victim was shot in
17 self-defense?

18 A Once again, ma'am, due to the lack of, of
19 investigation, it could of been of self-defense.

20 Q And you were present though at the time of the
21 shooting?

22 A Yeah, I was about 15-feet away from the shooting.

23 Q But you're not aware, yourself, of any evidence or of
24 any indication that a shooting was of self-defense?

25 A Honestly, I don't know why --

David Roy Lynch - Cross-examination
by Ms. White

1 Q Okay.

2 A -- the man was shot.

3 Q Okay. Thank you.

4 That's all I have for this witness, Your Honor.

5 THE COURT: Redirect.

6 MS. MOODY: No questions. No questions, Your Honor.

7 THE COURT: You may step down, sir.

8 The Applicant may call its next witness.

9 MS. MOODY: I beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 MS. MOODY: No further witnesses from the Applicant.

13 THE COURT: All right. The State may call any
14 witnesses it wishes to call.

15 MS. WHITE: Thank you, Your Honor.

16 We'd call Scott Robinson to the stand.

17 THE COURT: Sir, come to the stand if you would please.

18 (Witness complies.)

19 THE COURT: Place your left-hand on the Bible and raise
20 your right to the best of your ability.

21 SCOTT ROBINSON, being first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: And, once seated, once you're comfortable,

Scott Robinson - Direct examination
by Ms. White

1 state your name please.

2 THE WITNESS: My name is Scott David Robinson.

3 THE COURT: Your witness, counselor.

4 MS. WHITE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. WHITE:

7 Q Mr. Robinson, if you can, just give me a brief idea
8 of -- at the time you represented Mr. McDowell in 2007, do
9 you recall how long you'd been practicing law?

10 A Oh, be -- 15 years.

11 Q And, in that time, what was your experience?

12 Had you handled mostly criminal, civil, family law?

13 A It was kind of -- I think it was probably maybe 70
14 percent criminal and the rest it was defense on the civil
15 side.

16 Q And in -- at that time, had you had the experience of
17 handling defense of cases that were as serious as murder
18 charges?

19 A Yes.

20 Q Okay. Do you recall your representation of Mr.
21 McDowell in this?

22 A I do.

23 Q And how -- were you appointed on this case?

24 A Yes.

25 Q Okay. And do you recall how many times you had a

Scott Robinson - Direct examination
by Ms. White

1 chance to meet with him in the time between you were
2 appointed and the trial?

3 A I don't remember the exact number. But it would of
4 been a good number of times that I met with him.

5 Q Do you -- any idea -- and I -- this was something we
6 didn't ask Mr. McDowell.

7 But what was the time period from which you were
8 appointed until the trial?

9 Do you have any --?

10 A I think I have the appointment in the file. He -- the
11 original attorney he had was a Mr. Hatcher I believe his
12 name was.

13 Q Okay.

14 A That was the original public defender and there became
15 a conflict at some point, and that's when I was appointed by
16 Mr. Kitchens I believe is the, the, the clerk at the time---

17 Q Okay.

18 A ---I believe.

19 Q And the conflict possibly was because a codefendant was
20 also represented by the Public Defender's---

21 A I'm not exactly---

22 Q ---Office?

23 A I'm not exactly sure why---

24 Q Okay.

25 A ---but I know I was, I was replaced or he was replaced.

Scott Robinson - Direct examination
by Ms. White

1 It would of been months before that time before there was
2 ever even a trial or anything.

3 Q Okay.

4 A I can't tell you the exact date.

5 Q And in regards to discussions with Mr. McDowell, what
6 was your discussion about trial strategy?

7 Is he accurate that you discussed the motive of the
8 shooter and, and how that would reflect on him?

9 A From the beginning -- you see Mr. McDowell, he
10 cooperated with the State long before I was involved with
11 this case. I think what he did, he, he, he gave a
12 statement. He actually went out to the scene with them,
13 with the officer I believe.

14 We had a Jackson v. Denno hearing at the, at the trial
15 of the case with Judge Cole. But the discussions with him,
16 it was always mere presence because he never disputed that
17 he was there, that this group of people were there. But I
18 think his position was always I didn't -- it wasn't a
19 robbery. It was something different. I wasn't -- I didn't
20 participate in this. I was there. I was merely present and
21 that's why this mere presence, which was charged by the
22 judge in this case, that was the whole trial strategy in
23 this matter.

24 Q And, as you said, he never contested that he was there,
25 but the question was whether or not I guess he was

Scott Robinson - Direct examination
by Ms. White

1 participating in a planned armed robbery of someone versus
2 just happened to be there when Mr. Salters decided to shoot
3 this other gentleman?

4 A Yes.

5 Q Okay. And, in your discussions with him, starting off
6 with the trial, we talked about some of the pretrial
7 motions. But he's alleged that he believes you should of
8 filed a Batson motion.

9 Do you recall any discussions with him about how you
10 would do jury selection or picking a jury?

11 A Not that I recall as far as that goes. He participates
12 in the sense that we'll get a, a jury list of people and so
13 forth, and he gets an opportunity to look at that to see if
14 anyone on that list is someone he knows, has an association
15 with, or something of that nature. But as far as Batson
16 goes, I really -- I don't recall any, any conversation with
17 him because I believe that the, that the composition of the
18 jury was fair based on the population of Spartanburg County
19 at that time.

20 Q And if there had been an issue or if you had seen that
21 you felt that there was an unfair jury, would you have
22 raised the issue?

23 A Absolutely.

24 Q In regards to the issue of the failure to quash the
25 indictment, Mr. McDowell's alleged that the indictment was

Scott Robinson - Direct examination
by Ms. White

1 improper because it didn't clearly define the elements of
2 armed robbery.

3 was that anything that you had a concern about?

4 A Two things.

5 One, I think that in the transcript you'll see that we
6 waived the, we waived presentment as far as the, the armed
7 robbery goes in the beginning, and, second, there was
8 really -- there wasn't a jurisdictional problem with it. It
9 wasn't like a, a problem saying that it happened in a
10 different county or something like that. It was more of a,
11 a scribner's error more than anything else, and I didn't
12 believe, at that time, that it rose to the level of a
13 quashing of the indictment at that time.

14 Q And, to your understanding, he was aware of the fact
15 that he was being charged and tried on an armed robbery
16 charge?

17 A That was the whole -- that was the -- we actually had
18 filed a motion to sever charges before trial. So he was
19 well aware of this. I mean they -- the State was alleging
20 that there was a robbery taking -- that that took place,
21 that went awry. Mr. McDowell was arguing well, I didn't
22 know about this, I was just merely present at the time.

23 But, you know, he kind of hurt himself in the, in the
24 sense that he, he gave a statement. He showed the officers
25 where this all occurred, what happened, and so forth. And

Scott Robinson - Direct examination
by Ms. White

1 that was great. But it also put him there. It put him at
2 the scene and the mere presence, we argued that, but all the
3 codefendants all -- they were all different. They all had
4 said something different.

5 Q And, in fact, before he gave his statement I guess and
6 showed the police, had he not essentially fled to several
7 states with some of the codefendants?

8 A I think he left the State. I don't know necessarily---

9 Q Okay.

10 A ---that I would, that I would say that. I, I think he
11 just went because he was either going some place or had
12 friends. I don't know why he left. I don't think he was
13 leaving to flee or anything like that.

14 Q Okay.

15 A Cause I really think that he was just at the wrong, at
16 the, the wrong place at the wrong time and, unfortunately,
17 you know, he did -- he was there, he was with that group,
18 and that happened as a result of this whole thing.

19 Q Okay. In regards to the closing arguments, Mr. Bulsa
20 made a statement about Mr. Salters pleading guilty under the
21 hand of one hand of all theory.

22 was that anything that concerned you that you felt
23 should of been objected to at that point?

24 A There's only a few things that I would object to in a
25 closing argument. If he's gonna be disparaging Mr. McDowell

Scott Robinson - Direct examination
by Ms. White

1 or myself, trying to shift the burden and so forth, putting
2 in facts that weren't in evidence, things improper. That
3 was not improper by Mr. Bulsa because that was something
4 that was talked about during the trial. It may not of been
5 talked about a bunch, but it was part of it.

6 Q Okay.

7 A So he did not do anything, I thought, that was improper
8 that I could object to because, if I could, if I had
9 objected to something like that, and Judge Cole, he would
10 of, he would of said -- he would of done something. But
11 there was nothing I felt objectionable based on, based on
12 that at that time.

13 Q And in regards to objecting during closing, is that
14 something that has to be, I guess, a real strategic decision
15 for you?

16 A I think -- it's two things.

17 First, if it's really an objectionable issue with the
18 fact as far as like I, like I just said, as far as shifting
19 the burden, making disparaging comments about Mr. McDowell
20 or the counsel, going way outside the, the facts that were
21 presented in the case, things of that nature. But I
22 didn't -- I, I, I did not see anything wrong with that.

23 Q Okay.

24 A And as far as strategy goes, it makes really no sense
25 to object when you really don't have a good objection to

Scott Robinson - Direct examination
by Ms. White

1 something. It's gonna -- it's going to peak the interest of
2 a judge to possibly look at a mistrial or something of that
3 nature. Just to be careful.

4 Two, I think that interrupting another counsel's
5 closing argument when you don't need to is improper for an
6 attorney to do.

7 Q And tell me about the, the jury charges.

8 was that -- obviously we've talked about the entire
9 state's case was based on hand of one hand of all.

10 A Uh-huh. (Affirmative).

11 Q Were there any issues that were raised during the
12 closing -- I mean during jury charges that you had concerns
13 about or thought were improper?

14 A No, I thought Judge Cole did a great job. I think that
15 the, the charges were, were according to the law at that
16 time, and I, I found no reason to object to the jury charges
17 because Judge Cole would of allowed us to -- he would of
18 talked about it. He would of, he would of sat the attorneys
19 down and said listen, I'm gonna do this and that and we
20 could of done that. But the charges were very accurate I
21 thought.

22 Q And if there had been an issue when he raised at the
23 end asking if you had any issue with those---

24 A Yes, ma'am, absolutely.

25 Q ---would you of done so?

Scott Robinson - Direct examination
by Ms. White

1 A Absolutely.

2 Q And, finally, Mr. McDowell had mentioned that you
3 didn't file an appeal on his behalf.

4 You -- that is inaccurate, is it not?

5 A It's very inaccurate because we filed, actually I have
6 it here, we filed the motion for reconsideration and
7 possibly doing something, a new trial, and so forth. We
8 filed that right after -- within the ten-day period of time,
9 and then again -- then an order was issued by Judge Cole on
10 March 15th, excuse me, May -- it's difficult to read this
11 writing, but I think it's May 5th, 2009. It was a motion
12 for a new trial and for reconsideration and reduction in the
13 sentence imposed and Judge Cole denied that and then we
14 filed an appeal actually one day later.

15 Q Okay.

16 A So the appeal was properly done and the -- also
17 Appellate Defense, because I was appointed counsel, took
18 over the appeal and the Court of Appeals dismissed the, the
19 appeal.

20 Q Okay. Thank you.

21 That's all I have at this time, Your Honor.

22 THE COURT: Ms. Moody, you may cross-examine.

23 MS. MOODY: Thank you, Your Honor.

24 May it please the Court?

25 THE COURT: Yes, ma'am.

Scott Robinson - Cross-examination
by Ms. Moody

1 CROSS-EXAMINATION

2 BY MS. MOODY:

3 Q Mr. Robinson, you agree that this was a murder case,
4 not just an armed robbery case?

5 A Uh-huh. (Affirmative).

6 Yes.

7 Q Okay. And that, in assessing this case when you got
8 appointed, you knew of the potential sentence that Mr., Mr.
9 McDowell was facing?

10 A Yes.

11 Q Okay. And in the potential sentence that he was facing
12 ultimately on the murder was a range from 30 to life?

13 A Yes.

14 Q Okay. And you just testified that he participated, I
15 guess, he cooperated with the State --

16 A He did.

17 Q -- in terms of where the shooting occurred, where the
18 shooting occurred at the location of the---

19 A Yes, he took them out to the scene where he was. I was
20 an -- I wasn't -- it was before I was appointed. But I
21 believe he went out to the scene with them. I don't know
22 what he showed them, but I think he cooperated with them,
23 gave a statement, and so forth.

24 Q And so, at the very beginning, his defense or what he
25 told you, which obviously is a defense in the legal world,

Scott Robinson - Cross-examination
by Ms. Moody

1 was mere presence?

2 A That's correct.

3 Q Okay. And so, from that time, he's always maintained
4 that he did not know that the codefendant was gonna shoot
5 the victim?

6 A I don't think -- this was something, as I told the
7 prosecutor, there was bad luck really. It was bad being at
8 the wrong place at the wrong time, and, and to follow-up
9 with that, I did have an investigator and we did investigate
10 this case, and he did talk about -- we talked about that.
11 But in terms of a trial and saying well, I was, I was there,
12 but it wasn't suppose to be a robbery, that would not be
13 relevant. I didn't think that was a strategy to follow a --
14 to, to use that part of it to say well, this girl's gonna
15 come in and say well, we didn't want to do a robbery, which
16 is what Mr. Lynch has been talking about. We were just out
17 there, whatever we were gonna do was over a girl or
18 something.

19 I don't think---

20 Q Okay.

21 A ---that would of -- I don't think that would have taken
22 us out of the mere presence thing. I don't think that would
23 of done anything for us.

24 Q Okay. I'm not even going to that. But I'm just saying
25 that---

Scott Robinson - Cross-examination
by Ms. Moody

1 A Okay.

2 Q ---that was his position, from the beginning when you
3 met him, it was mere presence?

4 A Yes.

5 Q Okay.

6 A And I apologize for -- it's just like the typical
7 lawyer kind of thing and I want to kind of explain
8 everything. But I'm sorry.

9 Q Okay. I get what you're saying.

10 A Yes.

11 Q And thank you.

12 So the going into the trial, the defense was mere
13 presence---

14 A Uh-huh. (Affirmative).

15 Q ---and going into the trial he was looking at 30 to
16 life?

17 A Right.

18 Q Okay. And I think you or maybe you testified or maybe
19 Mr. McDowell testified that he received an offer, but he
20 didn't take the offer?

21 A That's correct.

22 Q Okay. And so as to the whole approach to the trial,
23 you knew that there's a potential that he could get the
24 conviction and that he could get the life sentence?

25 A Oh, yeah, anytime you go to trial you take that chance.

Scott Robinson - Cross-examination
by Ms. Moody

1 Q Okay. And with that in mind, because you know that
2 that's the situation, and as a lawyer, you know that
3 possibly you might miss something in the throws of a trial?

4 You might miss an issue---

5 A Um.

6 Q ---in the throws of a trial?

7 A I tell you what. I wish I was perfect. I know, I know
8 I'm not. But I will tell you I am very careful---

9 Q Okay.

10 A ---and I don't normally have very bad days -- any bad
11 days in trial. So, I, I don't agree with that. I don't
12 agree with that.

13 Q So -- okay. Just, just said you weren't perfect.

14 A I'm not perfect, but if you're saying---

15 Q But -- so then you would agree---

16 A If you're saying -- I admit that things can --
17 anything, you know, the sky could fall. I don't know.

18 Q Okay.

19 A But, you know, I don't, I don't -- I believe I'm very
20 careful preparing for trial, very careful in trial. I think
21 the judge did a great job as far as with this trial. So
22 I---

23 Q I'm not asking you to say---

24 A Okay.

25 Q ---you made a mistake.

Scott Robinson - Cross-examination
by Ms. Moody

1 I'm just saying you would agree that, in trials,
2 sometimes you can miss something?

3 A I think any lawyers---

4 Q That's anywhere.

5 A ---any person can miss, of course.

6 Q Okay.

7 A But, in this case, I don't believe that's applicable.

8 Q Okay. And so, as to the issues that Mr. McDowell
9 presented here today, the Jackson v. Denno, you went through
10 that. I believe you testified about that.

11 A Right.

12 Q But one of the issues that he talked about, I
13 apologize, was the Batson motion.

14 A Okay.

15 Q Okay. And are you testifying today that Mr. McDowell
16 never said anything about the composition of the jury?

17 A No, what I'm saying is that I don't recall him
18 making -- either talking to me and saying well, you've got
19 to make this motion, that kind of thing, I don't recall
20 that.

21 Q Well---

22 A If -- in trial---

23 Q ---not that he said you need to make a motion, but I
24 mean cause he's not a lawyer.

25 But the fact that he questioned that he had an all

Scott Robinson - Cross-examination
by Ms. Moody

1 white jury?

2 A I don't know if he, I don't know if he did that because
3 I don't think -- just because a jury is all white does not
4 mean he's not gonna get a fair trial. It doesn't. And the
5 jury composition that we had reflected the composition of
6 the, as far as racial percentage in Spartanburg County, the
7 jury that we chose did not have any law enforcement on it.
8 No one that -- the judge went through a whole list in the
9 voir dire as far as prior issues, things of that nature, to
10 make sure that this jury consisted of white or black,
11 Hispanic; whatever, consisted of a group of fair minded
12 people from Spartanburg County that could give a fair
13 verdict or resolution to a case. That's what they did.

14 If there was a Batson question, if he had raised that,
15 I would of said something in that. But I don't think he
16 raised that at that time. I don't think he said to me oh,
17 my gosh, we have an all white jury because---

18 Q Well, I---

19 A I don't believe -- I believe that the juries that are
20 chosen are fair and reflect the -- their -- they go through
21 a whole list of things to make sure that jury is, is fine.

22 Q Well, I understand you believe in the system, the jury
23 system.

24 However, from his standpoint as an African-American
25 male, do you understand that possibly he might feel that the

Scott Robinson - Cross-examination
by Ms. Moody

1 composition of the jury, an all white jury, might not be in
2 his best interest?

3 Do you understand that?

4 A I understand, I understand---

5 Q So the answer to that is---

6 A ---from that prospective.

7 Q ---yes?

8 A He did not -- I don't recall him, at that time, saying
9 to me Scott, we have an all white jury, I'm worried, we need
10 to make a Batson motion. I don't recall that.

11 Q Well, of course -- okay. You don't recall it, but you
12 can't say he didn't say anything about the composition of
13 the jury?

14 A I think I just answered that question. I don't recall.
15 I don't, I don't---

16 Q Right.

17 A ---recall anything about it.

18 Q But you can't say, without -- with definite certainty,
19 that he didn't question the composition of the jury based on
20 race?

21 A I just don't recall. I just don't recall if he did.

22 Q Okay.

23 A I don't think he did. If he had I would of taken him
24 aside and we'd discuss it cause that -- my investigator at
25 that time was black.

Scott Robinson - Cross-examination
by Ms. Moody

1 Q Okay.

2 A Well, you talked about---

3 Q I get what you're saying.

4 A But we would of talked -- we would of talked about
5 that. But he -- I don't recall him ever mentioning that or
6 talking about that.

7 Q I guess what I'm trying to get to the point is you just
8 testified that he didn't say you need to make a Batson
9 motion.

10 A Right.

11 Q You would agree with me that he does not know enough
12 legal terms to specifically say the motion that you need to
13 make because he's not the lawyer.

14 Correct?

15 A I, I know he's not a, he's not, he's not an attorney.
16 Of course, I -- of course.

17 Q So the answer to my question is yes?

18 A Okay. First of all, what is your question?

19 MS. WHITE: Your Honor, I think it's---

20 A It was the same question.

21 MS. WHITE: I think he said several times that he
22 doesn't recall that conversation. I don't think that's
23 gonna change in anyway.

24 MS. MOODY: Well---

25 THE COURT: I've gathered that that's going to be his

Scott Robinson - Cross-examination
by Ms. Moody

1 response. I don't know---

2 MS. MOODY: I guess I'm---

3 THE COURT: ---if you want to ask it differently.

4 MS. MOODY: ---trying to separate where he says he
5 didn't tell me to make a Batson motion. But he does not
6 necessarily say I'm asking him -- he can not disagree that
7 if he said that this is an all white jury, now what motion
8 that is, now he can't say that my client knows the technical
9 term for that.

10 THE COURT: well, my understanding of Mr. Robinson's
11 response, and I'll let you ask the question again, but one
12 more time and that's gonna be it, that he doesn't remember
13 the racial composition of the jury being discussed. I think
14 that was his, his answer.

15 Is that your answer?

16 THE WITNESS: That's my answer, yeah.

17 THE COURT: But now I'll let you ask whatever question
18 you think might change that.

19 MS. MOODY: I was---

20 THE COURT: He says he doesn't recall that discussion.

21 MS. MOODY: Okay.

22 THE COURT: So asking it again probably is not gonna
23 refresh his memory since it's been asked about four times
24 now.

25 MS. MOODY: I know.

Scott Robinson - Cross-examination
by Ms. Moody

1 THE COURT: I'll let you---

2 MS. MOODY: I was just trying to---

3 THE COURT: I'll let you ask it again. So ask it
4 again.

5 Q I'm just trying to be clear as to, during the trial,
6 during the jury selection, what discussion was there about
7 the jury selection?

8 You testified earlier that he got to see a jury list.

9 But, at the trial, when you were picking the jury, what
10 kind of discussion did you-all have?

11 Was it none or was there any at all?

12 A Okay. You're, you're -- okay. That's a different --
13 that's kind of a different question.

14 Okay. As I said before, I get the jury list. I go
15 through the whole jury list. He gets a copy of the jury
16 list, looks at the jury list, sees if anyone on there is
17 someone he's concerned about or he knows them or something
18 of that nature and he sits there.

19 I disagree with him that he does not have the
20 opportunity to, to pick the jury with the attorney because
21 he's sitting there and he is---

22 Q So, my question is---

23 A ---participating---

24 Q ---was there any discussion?

25 A Let me---

Scott Robinson - Cross-examination
by Ms. Moody

1 Q I understand you take a different position.

2 THE COURT: I'm gonna ask you to let him finish his
3 answer and then I'll let you ask another question.

4 MS. MOODY: Okay.

5 THE COURT: Finish your answer, Mr. Robinson.

6 THE WITNESS: Thank you, judge, Your Honor.

7 He has he -- he sits with me during the choosing of the
8 jury. He's there all the time. The judge is sitting there.
9 The prosecutor is sitting there. He has an opportunity to
10 see the composition. I don't recall him having any issue
11 with it. I don't recall ever talking to him about it. I
12 don't recall this. I'm just -- I just don't recall.

13 That's---

14 Q So then you could answer this specific question.

15 A Okay.

16 Q If you don't recall him mentioning it---

17 A Okay.

18 Q ---you can't necessarily say that he didn't mention it.

19 Is that correct?

20 A I think I'd go back to the previous answer. I don't
21 recall.

22 Q That's not the question.

23 The question is you can not necessarily say that he
24 didn't mention that he had issue with the composition of the
25 jury?

Scott Robinson - Cross-examination
by Ms. Moody

- 1 A Again---
- 2 Q It's either yes or no.
- 3 A I don't recall. I don't, I don't recall.
- 4 Q Okay.
- 5 A I can't, I can't -- you're asking me to speculate---
- 6 Q No.
- 7 A ---in terms of -- yes, you are. You're asking me to
- 8 speculate---
- 9 Q All right.
- 10 A ---well so forth. I just don't recall if I did or not.
- 11 That's what I'm telling you.
- 12 Q So during the time that you-all were in pretrial
- 13 motions, what, if anything, do you recall that your client
- 14 said to you?
- 15 A As far as specific conversation as far as pretrial
- 16 motions?
- 17 Q Yes.
- 18 Do you recall anything that occurred in terms of your
- 19 communication---
- 20 A I would, I would -- what I would talk about is we have
- 21 all these motions as far as to -- like with the bullets they
- 22 found, keeping out, out of putting into evidence as far as
- 23 him fleeing and so forth. He would see the motions. He
- 24 would see what I was doing with the motion that we're trying
- 25 to keep out from in the trial, but that's all we can talk

Scott Robinson - Cross-examination
by Ms. Moody

1 about.

2 Q So you actually talked about the motions with Mr.
3 McDowell?

4 A I don't recall when I talked about it or what the
5 comp -- what the -- I have a difficult time remembering what
6 I did last week half the time insofar as what my wife made
7 for dinner. But I can tell you, as far as that amount of
8 time, we would just -- I just don't know what I talked about
9 with him.

10 Q Okay.

11 A I know I would have showed him the motion and the
12 purpose of the motion and he sees a copy of it. But as far
13 as what I -- the other conversation, I really don't know
14 what else I would say.

15 Q So your testimony is that you explained to him each
16 motion?

17 A I usually would. But I don't know. I mean I can't
18 tell you -- I would sit down with him. He'd be there
19 participating in this whole process. He could ask questions
20 of me or anything of that. But as far as the composition
21 of -- or the, the substance of his questions and what I
22 talked about, I really can't recall that. I just don't
23 know.

24 Q Okay. The second issue that he raises in his
25 application is objecting to the indictment.

Scott Robinson - Cross-examination
by Ms. Moody

1 Did you-all discuss the indictment?

2 Do you recall that?

3 A No, I don't recall. It's hard to recall what you
4 talked about with a client on every single issue. As far as
5 the indictment, there was no jurisdictional problem with
6 that indictment. I can only, as an, as an officer of the
7 Court, I can't, I can't object to things that are spurious
8 or that make -- that really make no sense. I have to be
9 careful that I, that I only object to things that are
10 objectionable. I mean I can't just go off on a tangent and
11 just -- and so forth. But as far as what I recall in terms
12 of every motion talking about, no, I don't, I don't know
13 that.

14 Q Okay. And as to the third objection, excuse me, the
15 third issue dealing with the Trial Judge -- excuse me. I'm
16 sorry. Not the Trial Judge, but the comments made by the
17 state, the prosecution.

18 Do you recall discussing with him the hand of one
19 the -- is the hand of all?

20 A It was always -- I mean with Mr. Lynch?

21 Oh absolutely.

22 Q Mr. McDowell, your client, yes.

23 A When he get -- that's always been an issue in this
24 case. It's always been an issue.

25 Q Okay.

Scott Robinson - Cross-examination
by Ms. Moody

1 A I mean he says he's merely present. But you got this
2 hand of one hand of all accessory -- the, the accomplice
3 liability thing, and even when he talked about this 30 year
4 offer that he had, that was always something that was talked
5 about. You know, you got a real big problem here, man. But
6 he wouldn't listen to that. He wanted -- he said I
7 didn't -- I wasn't out there to do a robbery. I was out
8 there, I was just there merely present, and that's what we
9 went on was that part of it, was merely being present in
10 this case.

11 Q Okay. And do you recall, at the end of the case, where
12 you made a motion for directed verdict?

13 Do you recall---

14 A I would of made a directed verdict after the completion
15 of the State's cases.

16 Q Right.

17 So you recall making that?

18 A I guess I got to go by the transcript. I, I -- you're
19 asking me -- if you have a transcript that says I made that
20 motion, I would of made it. But I don't know. You have to
21 look at the transcript.

22 MS. MOODY: 332, Your Honor.

23 May I approach the witness?

24 THE COURT: You may approach, yes, ma'am.

25 Q Okay. Do you recall making the -- well, review 332 --

Scott Robinson - Cross-examination
by Ms. Moody

1 322.

2 A Yeah, we made a motion for directed verdict on Page
3 322.

4 Q Okay. And towards the end of that page, do you recall
5 talking about the hand of one is the hand of all in that?

6 A Yes.

7 Q Can you read that into the record, what you stated?

8 A Which one, the whole thing?

9 Which part?

10 Q Well, actually, yeah, to be in all candor, in fairness
11 to the Court, please read from Line 6 to---

12 A Okay. This is in the context of making a motion for
13 directed verdict.

14 "Well, Your Honor, we believe that the State has not,
15 taking the evidence in the light most favorable to the
16 State, we believe that the State has not -- hasn't shown a
17 direct evidence or any substantial, substantial evidence
18 reasonably tending to prove guilt in this matter. The
19 only -- they have not tied the gun to this defendant. They
20 have not tied any bullets to this defendant and the only
21 witness that they had to testify, she actually did not see
22 what happened on this location. She was blocked by the
23 trees.

24 As far as the theory that the State has, has that this
25 is the hand of one hand of all, they have not presented any

Scott Robinson - Cross-examination
by Ms. Moody

1 reasonably, any substantial circumstantial evidence or
2 direct evidence that he was involved in any sort of a plan
3 that was going on out there to do anything as far as robbery
4 or anything of that nature. On that basis, we'd ask for you
5 to grant our motion for a directed verdict."

6 Okay. There you go.

7 Q Thank you.

8 Now, you -- earlier you were talking about making
9 objections during closing arguments of opposing counsel and
10 you felt that that was not courteous I believe and you would
11 not make a objection unless it was disparaging, burden
12 shifts, or facts into evidence.

13 A I didn't -- it wasn't a question of being courteous.
14 It was a question of what the law is. It's a question of
15 what I can object to.

16 If he burden -- if he burden shifts, makes these
17 different arguments, I'm just going -- at that time I was
18 just going by as far as what he can, what he can't say. If
19 he had made comments like that, I would of objected to that,
20 but he didn't make any comments like that --

21 Q All right.

22 A -- and the whole, the whole case was built on hand of
23 one hand of all.

24 Q Okay. So you said that -- I believe it was your
25 testimony it's just courteous or it's improper to make

Scott Robinson - Cross-examination
by Ms. Moody

1 objections during a closing?

2 A I think if it, if -- if he, if comments are -- if a
3 solicitor makes -- does certain things that are, that are
4 improper, the attorney should object. But if the, if the
5 comments -- it wasn't -- it was -- this was a hand of one
6 hand of all case. The solicitor can make a comment about a
7 hand of one hand of all case. That's perfectly proper.

8 Q Well, I'm just trying to understand what your strategy
9 was.

10 You indicated that you made the directed verdict, and
11 during the time that you felt that there wasn't anything
12 that he could -- they could present as to the hand of one
13 the hand of all.

14 Mr. McDowell has testified his issue with this is that
15 you didn't object to it, and so I'm trying to understand
16 your basis for why you didn't object to it in the closing.

17 So when they mentioned the hand of one the hand of all,
18 are you saying that your position was that they were well
19 within their rights to make that comment to the jury?

20 A Yes, and let's go, let's go back here. A directed
21 verdict motion is to -- is saying that the State has not
22 presented any evidence or whatever in this case. That's
23 what that's for. That's why our---

24 Q I understand that.

25 A I have to make that argument to, to preserve, at that

Scott Robinson - Cross-examination
by Ms. Moody

1 point, and to see if I can get this case disposed of. But
2 the whole case was about hand of one hand of all and so
3 forth, and Mr. Lynch, Mr. McDowell, is arguing I was merely
4 present there. That's what he's arguing.

5 Q Okay. So your explanation for not making the objection
6 is the solicitor was well in their rights because that's
7 what the case was?

8 A They were within their rights to do that because it was
9 not improper for them to do that because that's what the
10 case was about. He did not go beyond there to put -- facts
11 were in evidence, argued different theories, didn't know
12 what they were doing, and wasn't their -- they were just --
13 it's a different things I listed with you and the, the
14 state. It was not improper---

15 Q All right.

16 A ---and I didn't object to it.

17 Q All right. So in terms of the instructions from the
18 judge, your earlier testimony was that you felt that the
19 judge did a great job and you found no reason to object to
20 any of the instructions from the judge.

21 Is that correct?

22 A Okay.

23 Q That's correct?

24 I'm understanding that---

25 A I think the judge, at that time, followed the law as it

Scott Robinson - Cross-examination
by Ms. Moody

1 existed back at that time. He gave instructions that were
2 properly -- I mean I'm not -- I'm just an attorney. I, I
3 did -- and, at that time, I'm no better than anybody else.
4 But I'll tell you, I thought the judge gave proper
5 instructions in this case under the law. That's all I can,
6 that's all I can say.

7 Q Okay. I'm not disagreeing with you on that. I'm just
8 trying to make sure that I understood your earlier
9 testimony.

10 A Okay.

11 Q That's what you said and I'm not thinking that you had
12 a conversation with the judge or the State regarding the
13 instructions that you would give.

14 Am I correct in that?

15 You did not discuss jury charges that the judge would
16 give to the jury?

17 A Now here's what I have to go by. I have to go by the
18 transcript in this case, the transcript.

19 There are various sidebars that occur during a trial.
20 Those are not -- the -- I can just go by the transcript.
21 The judge gave proper instructions for the law of this case
22 at that time.

23 Q So this is just---

24 A Go ahead.

25 Q ---asking the same question again---

Scott Robinson - Cross-examination
by Ms. Moody

1 A Keep going.

2 Q ---so I'm clear on this.

3 Do you have any notes where y'all reviewed jury
4 charges---

5 A No.

6 Q ---potential jury charges?

7 A I don't. I don't.

8 Q Did you make any requests for certain jury charges?

9 A I would have probably -- we may of talked about it at
10 the sidebar or something of that nature. The whole thing
11 is---

12 Q When you say we, who's we?

13 A It would be the State and the judge and the judge's
14 clerk.

15 Q Okay. So as far as you tell from your file, you did
16 not submit any kind of jury charge to the judge and the
17 judge gave jury instructions to the -- jury charge to the
18 jury that you were fine with?

19 A Yes.

20 Q Okay. Is there any charge that you, looking back on
21 that, that you would of added to that?

22 A No.

23 Q Okay. Now, you indicated that you filed a motion for
24 reconsideration and you received a, I guess, a denial from
25 the judge?

Scott Robinson - Cross-examination
by Ms. Moody

1 A Judge Cole, yes.

2 Q Okay. And the basis for your motion for
3 reconsideration was what?

4 A I've got the, I've got the motion. It's just --
5 it's -- you know, I, I like Roy Lynch. I think he's, I
6 think he's a fine fellow.

7 Q That's not my question.

8 A No, let me---

9 Q I'm just asking you---

10 A Okay. Can I answer---

11 Q ---what is the basis---

12 A Can I answer the question?

13 Q Well, the question is what was the basis for the motion
14 to reconsider?

15 A Well, I, I have the motion.

16 If you let me finish --

17 Q Okay.

18 A -- I can, I can go over it.

19 MS. MOODY: Your Honor, I ask that you instruct the
20 witness just to answer the question.

21 THE COURT: I'll instruct him to answer the questions.

22 MS. MOODY: Yes, sir.

23 THE COURT: But I'm gonna let him formulate his
24 answers.

25 MS. MOODY: well, he's giving---

Scott Robinson - Cross-examination
by Ms. Moody

1 THE COURT: I don't know where he's going with that
2 statement.

3 MS. MOODY: Well, the -- it's---

4 THE COURT: So I'm gonna let him formulate his answer.

5 Q The question is what was the basis for the motion for
6 reconsideration.

7 A It was actually a motion for reconsideration and a new
8 trial in this case and reduction in sentence. That's what
9 it -- that's what the whole basis of it was.

10 Q So the reduction in the sentence --

11 A Right. Correct.

12 Q -- and the new trial?

13 And your request for the new trial was---

14 A Based on the insufficiency of the evidence. I didn't
15 think -- just like I said in my motion for directed verdict
16 that I didn't feel that they evidence, any evidence to prove
17 that, and I'm reading from the order from the judge. I
18 don't have the motion exactly right here.

19 Q Okay.

20 A But -- and also -- it was also to reconsider the
21 sentence and mitigate based on the fact he was a young man,
22 his cooperation with law enforcement as far as giving the
23 statement, going out to the scene and so forth. I thought
24 that was important. I thought that would be something to
25 mitigate this process, and the interest -- the fact that he

Scott Robinson - Cross-examination
by Ms. Moody

1 had a lot of aspirations. I know he had a lot of things he
2 wanted to do.

3 I tried to, tried to -- that's what I was trying to do
4 in this case. It was the sufficiency of the evidence, which
5 would be the new trial --

6 Q Okay.

7 A -- and the reconsideration of the sentence, a life
8 sentence, in this matter based on his age, his aspirations,
9 and his cooperation with law enforcement.

10 Q Okay.

11 A I thought those were things that were important and I
12 thought that that should come out.

13 Q Okay.

14 A And that's what the motion was based on. And after
15 the, the, the judge's order came down in 2009, we appealed
16 it.

17 MS. MOODY: Okay. No further questions for this
18 witness.

19 THE COURT: Redirect? Redirect?

20 MS. WHITE: Nothing further, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: State wish to call any other witnesses?

24 MS. WHITE: No, Your Honor.

25 THE COURT: All right. Ms. Moody, I'll be happy to --

1 do you wish to call any reply witnesses?

2 MS. MOODY: No, sir, Your Honor.

3 THE COURT: All right. I'll hear argument.

4 MS. MOODY: Your Honor, we'd ask the Court to grant
5 relief based on the testimony that was presented by Mr.
6 McDowell.

7 Mr. McDowell's first issue being the Batson motion
8 deals with the composition of the jury and it's his
9 testimony that he indicated to his lawyer that he had an all
10 white jury.

11 Now, there's no other testimony that conflicts with
12 whether or not there was a discussion about that or not. I
13 believe the testimony from his attorney, Mr. Robinson, was
14 that he didn't recall. He didn't find -- and throughout all
15 this Mr. Robinson indicates that he felt that it was a fair
16 jury based on the jury qualification in that -- in the whole
17 process. He believes in the process, which I understand
18 that.

19 However, from Mr. McDowell's position, he's indicating,
20 through his application and his testimony, that he felt like
21 he didn't have a fair jury presented to hear his case and
22 that's based on the racial content of the case.

23 There is, you know, I will acknowledge that we did not
24 get into the testimony about how many different strikes or
25 how many other individuals were struck based on race in that

1 they didn't go through the neutrality of strike of Juror
2 Number 43. We don't have that because there was no motion
3 made and that was not preserved for the record in terms of
4 if it---

5 THE COURT: well, there is a record though of the
6 strikes that would of been taken by the State---

7 MS. MOODY: That would of been in the---

8 THE COURT: ---and who they struck and their
9 backgrounds and all that information is available in the
10 public record.

11 MS. MOODY: Right. I'm just acknowledging that---

12 THE COURT: There is evidence available. I did not
13 hear any evidence that would indicate that the State's
14 strike was racially motivated or that there was a pretextual
15 reason given for why they made that strike. So haven't
16 heard any evidence to that effect.

17 MS. MOODY: well, that's what I'm acknowledging, that
18 my client didn't testify---

19 THE COURT: I know you are. I, I agree. I didn't hear
20 that.

21 MS. MOODY: Okay. And it -- and I would respectfully
22 say in the record there's not gonna be any arguments about
23 pretextual strike with the jury because there was no Batson
24 motion raised. That's the only thing that I'm trying to
25 acknowledge with that, Your Honor.

1 As to the issue---

2 THE COURT: So you're -- are you acknowledging that we
3 don't know whether the outcome would of been any different
4 had it been made?

5 MS. MOODY: I mean other than who they have, we do in
6 terms of the public record of who was brought in and I
7 understand that the Court will read the transcript later.
8 That's all I'm saying.

9 THE COURT: Okay. Go ahead.

10 MS. MOODY: Okay. As to the armed robbery, Your Honor,
11 I think that issue, Mr. McDowell says that he was not there
12 to rob and I'm not necessarily sure that there should of
13 been a challenging of the indictment. I believe the
14 indictment does state the Code Section. It does not allege
15 the -- what he actually took from the victim or any of that
16 and that would be---

17 THE COURT: It says that -- I read the indictment. It
18 says that there was a robbery --

19 MS. MOODY: Right.

20 THE COURT: -- and robbery indicates something was
21 taken.

22 MS. MOODY: Right.

23 THE COURT: That's the definition of it, but go ahead.

24 MS. MOODY: Right. And I don't think that if you'll
25 see from the transcript that there wasn't anything actually

1 taken from the victim by this defendant. I -- that's not
2 necessarily my strongest part of this case is my---

3 THE COURT: I understand.

4 MS. MOODY: ---opinion.

5 As to the objection to the improper comments on the
6 hand of one hand of all, I'll leave that to the Court's
7 discretion as to whether the solicitor was properly within
8 the bounds of the law. I believe the testimony from Mr.
9 Robinson was that he felt that it was not -- I recognize
10 that the, the trial counsel has the right to decide the
11 strategy in a PCR, excuse me, in a trial situation.

12 As to the jury instructions, Your Honor, it's kind of
13 unclear as to what happened with jury charges. I recognize
14 that Mr. Robinson testified that he felt that the charges
15 were appropriate based on having dealt with Judge Cole.

16 He did not have a discussion with my client to explain
17 to him any of the jury instructions and I would leave that
18 to the Court's judgment as to the, from the record, as to
19 what happened or what was appropriate in terms of the jury
20 charges.

21 THE COURT: All right. Thank you, ma'am.

22 MS. MOODY: Thank you.

23 THE COURT: Yes, Ms. White.

24 MS. WHITE: Thank you, Your Honor.

25 The State would argue that the Applicant has failed to

1 meet his burden of proof of showing that there was any
2 prejudice. Not only was there no deficient conduct, but he
3 can't show that the outcome of this trial would have changed
4 but for had, had there been a Batson motion or had there
5 been any kind of objection to or motion to quash the
6 indictment.

7 In fact, as Mr. Robinson testified, I believe it's
8 clear that had he believed there was a legal basis for an
9 objection or motion to quash or an objection to closing
10 arguments, he would of made it and, in this situation, we
11 believe that there was no legal basis, and, therefore, there
12 was no deficiency and the application should be denied.

13 THE COURT: All right. I'll take the matter under
14 advisement and issue an order.

15 Thank you very much.

16 MS. MOODY: Thank you, Your Honor.

17 MS. WHITE: Thank you.

18 Your Honor, before I can -- before we close this
19 record, I did receive just an email from the Clerk's Office
20 here in Spartanburg to indicate that they had received a
21 letter from Mr. McDowell with some items. I was gonna let
22 Ms. Moody, you know, see it I guess. I don't know exactly
23 what it is. Obviously it was filed I believe this week and
24 the State would object to any document that's filed pro se
25 since he is represented by counsel.

1 THE COURT: Have you received, by electronic means, a
2 copy of that?

3 MS. WHITE: I just received a copy of an email from---

4 THE COURT: Well, why don't we take a short break and
5 let Ms. Moody look at that.

6 MS. WHITE: Okay.

7 THE COURT: I'll stay on the bench. Leave the
8 defendant where he is -- I mean the Applicant where he is.

9 (WHEREUPON, a short recess was taken at this time.)

10 MS. WHITE: Your Honor, we've reviewed it.

11 It does appear to be a document that reflects the
12 actual allegations that he proceeded on today.

13 THE COURT: Okay.

14 MS. WHITE: So---

15 THE COURT: So do you feel there's any need to discuss
16 that with your client or---

17 MS. MOODY: No, sir.

18 THE COURT: ---put anything else on the record?

19 MS. MOODY: Well, I'll put on the record, Your Honor,
20 he -- I -- as I didn't get to speak with him and he's
21 written me several times telling me not to try and speak
22 with him before this hearing, that's why I thought that
23 there was an issue before the Court that he might of wanted
24 to take up.

25 I haven't received a second copy of that. But those

1 are the issues that I discussed with Ms. White as far as
2 grounds for his PCR.

3 THE COURT: So you do not see any additional issues
4 that the Court should address?

5 MS. MOODY: No, sir, Your Honor.

6 THE COURT: Cause he wants specific rulings on all
7 the---

8 MS. MOODY: Multiple issues.

9 THE COURT: I just wanted to be sure.

10 MS. MOODY: Okay.

11 THE COURT: Okay. Thank you very much.

12 We're in adjournment in the case.

13 MS. WHITE: Thank you, Your Honor.

14

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 25th day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 22nd, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2011-CP-42-5550
David Roy Lynch,	)	
a/k/a Roy David McDowell,	)	
S.C.D.C. No. 270223,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent,	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 12, 2011. The Respondent made its return on September 11, 2013. An evidentiary hearing was held on March 25, 2015 at the Spartanburg County Courthouse. The Applicant was present and represented by Leah Moody, Esquire. Suzanne H. White, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Scott D. Robinson, Esquire ("Counsel"). The Court had before it the trial transcript, the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections. The Applicant was indicted at the August 2005 term of the Spartanburg County Grand Jury for assault and battery with intent to kill (ABWIK) (2005-GS-42-3565) and murder (2005-GS-42-3566) and at the January 2007 term for armed robbery (2006-GS-42-3826). He was represented

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by Scott D. Robinson, Esquire.

After the State called the case to trial, the Applicant was found guilty. On January 10, 2007, the Applicant was sentenced by the Honorable J. Derham Cole to concurrent terms of 20 years for ABWIK, life imprisonment for murder, and 30 years for armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Lynch, Op. No. 2011-UP-251 (S.C. Ct. App. Filed May 24, 2011). The Remittitur was sent on June 10, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.

While the Applicant filed a pro se Amendment to the Application for Post-conviction Relief on December 16, 2013, he did so while represented by counsel. As there is no right to hybrid representation, this Court will not consider any issues raised in this pro se document. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of trial counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

A.

The Applicant stated that he did not choose his jury and that Counsel did so. The Applicant stated there was only one black juror and that he wanted Counsel to challenge the composition of the jury. Counsel testified he did not the Applicant making an issue of the racial composition of the jury. Counsel testified the Applicant was present at jury selection and had the opportunity to comment. Regardless, Counsel testified the jury composition in this case was

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 SC JUDICIAL COUNCIL

fine.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the jury composition under Batson.² This Court finds the Applicant has failed to present any reasons upon which trial counsel could have based an argument that any of the State's strikes were discriminatory. As such, the Applicant failed to meet his burden of proving that trial counsel was deficient in not making a Batson objection. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding the PCR applicant bears the burden of proving the allegations in their application).

B.

The Applicant stated Counsel failed to quash his armed robbery indictment. The Applicant stated information on the indictment is inaccurate. The Applicant stated the elements in the armed robbery indictment did not match the elements presented at trial. The Applicant admitted, however, that he was aware he was going to trial on this armed robbery charge. Counsel testified there were no jurisdictional issues with the Applicant's armed robbery indictment.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the armed robbery indictment or filed a motion to quash. This Court has examined the indictment and does not find there were any fatal flaws. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appries the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they

² Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986).

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are merely notice documents. Id. at 102, 610 S.E.2d at 500. The armed robbery indictment in this case was clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

C.

The Applicant stated Counsel should have objected during the State's closing argument because he had a severed trial and the assistant solicitor noted his co-defendant pled guilty. Counsel testified he very seldom objects during closing argument and did not believe the State's closing argument in this case was improper. Counsel testified it would not have made sense to object and interrupt the assistant solicitor with no real basis.

During closing argument, the assistant solicitor discussed the theory of accomplice liability and noted "Antwon Salters pled guilty." (Trial transcript, p.329). This Court notes several witnesses testified about Salters throughout the trial and the trial judge charged the jury on the theory of accomplice liability. Further, the assistant solicitor is permitted to comment upon the trial testimony. See State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences); see also State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony). The Applicant failed to demonstrate trial counsel erred in not objecting to this statement in closing argument.

D.

The Applicant stated Counsel failed to object to the malice jury charge. Counsel testified the trial judge issued proper charges according to the law at the time and that there was no basis to object to the jury charges.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the malice jury charge. The gravamen of the Applicant's complaint appears to be that the malice instruction in his case contained a statement about an inference of malice arising from the use of a deadly weapon. (Trial transcript, p.363). In 2009, the South Carolina Supreme Court found such a charge was improper. State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). This Court notes, however, that the Applicant's trial pre-dated Belcher and that case specifically prohibited PCR applicants from asserting this issue as a claim in a PCR action for cases tried prior to Belcher. Id. at 612, 685 S.E.2d at 810. As the malice jury charge was proper at the time of the Applicant's trial, trial counsel was not deficient in failing to make an objection.

E.

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was credible, while the Applicant's testimony was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness. Counsel testified the defense theory was always that of "mere presence" and this Court finds that theory was well-executed at the Applicant's trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier 351 S.C.

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As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17th day of August, 2015.

Roger L. Couch
Presiding Judge

M. HOPE BLACKLEY

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WITNESSES

D.W. Taylor

Spartanburg Co. Sheriff Dept

1. SENTENCE MADE

2. **Computer**

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

Computer

8. CORRECT ARREST NUMBER

H947634

ACTION OF GRAND JURY

True Bill
W. S. [Signature]

Foreperson of Grand Jury

Date: 8-25-05

VERDICT

Guilty

Joy C. Oates

Foreperson of Petit Jury

Date: 01/10/07

DOCKET NO. - 05-GS-42-3566

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 29 2005

TERM

THE STATE

vs.

DAVID ROY LYNCH

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

Trey Gowdy, Solicitor

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA

2005 AUG 31 PM 3:29

MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

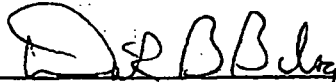
AUG 25 2005

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, David Roy Lynch did in Spartanburg County on or about December 30, 2004, feloniously, willfully, and with malice aforethought, kill one Lee Evans, by shooting the victim and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


Assistant Solicitor

WITNESSES

D. W. Taylor

SENTENCE MADE

Spartanburg County Sheriff's Office

Computer

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

Computer

7. FINGERPRINTS MADE

ARREST WARRANT NUMBER

H947635

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 8-25-05

VERDICT

Guilty

Jeff C. Oates

Foreperson of Petit Jury

Date:

01/10/07

DOCKET NO.

05-GS-42-3565

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 29 2005

TERM

THE STATE

vs.

DAVID ROY LYNCH

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2005 AUG 31 PM 3:29

MARC KITCHENS

502
STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

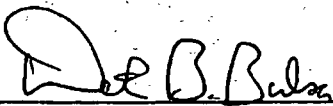
INDICTMENT

At a Court of General Sessions, convened on AUG 25 2005, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That David Roy Lynch did in Spartanburg County on or about December 30, 2004, with malice aforethought commit an assault and battery upon one Leon Young, by shooting the victim, with the intent to kill the said victim, in violation of §16-03-620, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976; as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE ☒

2. REPORT ENTERED ☒

Spartanburg County Sheriff's Department

3. CARD FILLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND FINE CARD ☒

8. RETURN VIOLATIONS COPY

ARREST WARRANT NUMBER

Direct Indictment

Amended

ACTION OF GRAND JURY

True Bill

Amye C.
Foreperson of Grand Jury

Date: *12-28-06*

VERDICT

Guilty

Joy E. Oatis
Foreperson of Petit Jury

Date: *01/10/07*

DOCKET NO.

06-GS-42-3826

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 08 2007

TERM

THE STATE
vs.

David Roy Lynch

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED COURT
JAN 08 2007
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

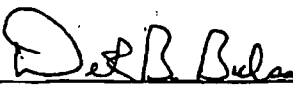
INDICTMENT

At a Court of General Sessions, convened on DEC 30 2006 the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That David Roy Lynch did in Spartanburg County on or about December 30, 2004, rob Lee Evans while armed with a pistol, a deadly weapon, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR