RECEIVED
FEB - 8 2016
SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 2015-UP-501 (S.C. Ct. App. filed 10/28/2015)

08-GS-18-0009

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

PETITIONER

APPELLATE CASE NO. 2016-000092

APPENDIX

LARA CAUDY
Appellate Defender

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorneys for Petitioner

ALAN WILSON
Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
140 N. Main Street, Suite 102
Summerville, SC 29483-6443
(843) 871-2640

Attorneys for Respondent

INDEX

INDEX i

COURT OF APPEALS OPINION NO. 2015-UP-501 (FILED OCTOBER 28, 2015) 1

PETITION FOR REHEARING (DATED NOVEMBER 12, 2015) 4

LETTER FROM COURT OF APPEALS REQUESTING RETURN (DATED NOVEMBER 13, 2015) 27

RETURN TO PETITION FOR REHEARING (FILED NOVEMBER 23, 2015) 28

ORDER DENYING PETITION FOR REHEARING (DATED DECEMBER 17, 2015) 43

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Don-Survi Chisolm, Appellant.

Appellate Case No. 2011-200186

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2015-UP-501
Heard September 15, 2015 – Filed October 28, 2015

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Lara Mary Caudy, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Senior Assistant Attorney General Melody Jane Brown, all of Columbia, and David Michael Pascoe, Jr., of Orangeburg, for Respondent.

PER CURIAM: Don-Survi Chisolm appeals his murder conviction, arguing the trial court erred in (1) admitting evidence of prior drug dealing; (2) admitting a weapon; (3) failing to suppress evidence from a search warrant; (4) refusing to permit cross-examination about an allegedly unrelated weapon; and (5) allowing him to represent himself. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting evidence of prior drug dealing: *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *State v. Dennis*, 402 S.C. 627, 635-36, 742 S.E.2d 21, 26 (Ct. App. 2013) (explaining that "[o]ne of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case" (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980))); *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (stating a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances).

2. As to whether the trial court erred in admitting a weapon into evidence: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* ("A party may not argue one ground at trial and an alternate ground on appeal.").

3. As to whether the trial court erred in refusing to suppress evidence obtained based on a search warrant: *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (stating when reviewing a trial court's ruling on a motion to suppress based on the Fourth Amendment, an appellate court will affirm if there is any evidence to support the ruling and reverse only when there is clear error); *State v. Jones*, 342 S.C. 121, 126-27, 536 S.E.2d 675, 678 (2000) (holding a defendant is entitled to challenge misstatements in a warrant affidavit if the following criteria are met: "(1) the defendant's attack is more than conclusory and is supported by more than a mere desire to cross-examine; (2) the defendant makes allegations of deliberate falsehood or of reckless disregard for the truth which are accompanied by an offer of proof; and (3) the affiant has made the allegedly false or reckless statement"); *State v. Robinson*, 408 S.C. 268, 274, 758 S.E.2d 725, 728 (Ct. App. 2014), *cert. granted* (Dec. 3, 2014) (explaining a court may not suppress evidence "simply because the officer made a false statement in, or omitted key facts from, an

affidavit supporting a search warrant"); *id.* (stating the proponent of suppression must demonstrate the false statements or omissions rendered the affidavit unable to support a finding of probable cause).

4. As to whether the trial court erred in refusing to permit cross-examination about an allegedly unrelated weapon: Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."); *State v. Pradubsri*, 403 S.C. 270, 276-77, 743 S.E.2d 98, 102 (Ct. App. 2013) (noting a criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination); *State v. Boiter*, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990) ("Although the Confrontation Clause 'tips the scales' in favor of permitting cross-examination if it could reasonably be expected to have an effect on the jury, a court may prohibit cross-examination for impeachment purposes when the probative value of the evidence that the defendant seeks to elicit is substantially outweighed by the risk of prejudice."); *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) ("The trial judge retains discretion to impose reasonable limits on the scope of cross-examination."); *State v. Lyles*, 379 S.C. 328, 336-37, 665 S.E.2d 201, 205-06 (Ct. App. 2008) (explaining only relevant evidence is admissible).

5. As to whether the trial court erred in allowing Chisolm to represent himself: *State v. McLauren*, 349 S.C. 488, 493, 563 S.E.2d 346, 348 (Ct. App. 2002) (explaining a defendant may waive his right to counsel and proceed pro se); *id.* at 493, 563 S.E.2d at 348-49 (requiring the waiver of counsel to be knowingly and intelligently made); *State v. Bryant*, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009) ("It is the trial court's responsibility to determine whether there was a knowing and intelligent waiver by the accused."); *State v. Cash*, 309 S.C. 40, 42-43, 419 S.E.2d 811, 813 (Ct. App. 1992) (listing the factors used in determining if a defendant had sufficient background to understand the disadvantages of self-representation); *McLauren*, 349 S.C. at 494, 563 S.E.2d at 349 ("In the absence of a specific inquiry by the [circuit court] addressing the disadvantages of a pro se defense . . . , the appellate court will look to the record to determine whether [a defendant] had sufficient background or was apprised of his rights by some other source.").

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

4

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT

APPELLATE CASE NO. 2011-200186

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 2015-UP-501

PETITION FOR REHEARING

On October 28, 2015, this Court affirmed Appellant's conviction and sentence in State v. Chisolm, 2015-UP-501 (S.C. Ct. App. Filed October 28, 2015). Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions this Court for rehearing because the Court may have overlooked and misapprehended several significant points when rendering its opinion.

First, this Court incorrectly held the trial court did not err in admitting evidence of Appellant's alleged prior drug dealing since this evidence did not "furnish part of the context of the crime" nor was it "necessary to a full presentation of the case" as this Court found. The testimony regarding Appellant's alleged prior drug dealing should have been excluded under Rule 404(b),

SCRE, because the evidence failed to establish any logical motive despite what the state argued at trial and on appeal. Moreover, this evidence should have been excluded under Rule 402, SCRE and Rule 403, SCRE, because it was irrelevant and its probative value was substantially outweighed by the danger of unfair prejudice to Appellant.

The state alleged at trial that Appellant replaced the front passenger seat of his Dodge Durango within days of the murder to destroy evidence linking him to the offense, specifically blood evidence that was supposedly on the seat. Over objection, the state presented the testimony of Thomas Simonelli. Simonelli testified that on September 14, 2007, the day after the murder, Appellant called him and allegedly asked Simonelli to purchase a passenger seat from LKQ Automotive on a credit card in exchange for cocaine. R. 412, l. 6 – 414, l. 4. Simonelli also claimed he "used to have a drug problem," and that Appellant sold him drugs. R. 411, ll. 21-24.

The state argued at trial that Simonelli's testimony was admissible under Rule 404(b), SCRE to show motive. The solicitor emphasized Tamekka Williams' testimony that the decedent had started selling drugs about a month prior to the murder and argued, "I need to establish at this point . . . [Appellant] also sold drugs in that area to show motive as to why he would want to take out the victim . . ." R. 384, l. 23 – 385, l. 10; See R. 241, l. 20 – 242, l. 8. The solicitor stated, "It's the state's position that that would be quite a good reason for Mr. Chisolm [Appellant] to want to take out a fellow drug dealer that's cutting into his territory." Id.

The state also argued the testimony was more probative than prejudicial because Appellant told law enforcement he replaced the seat because it had cigarette burns on it. The state further asserted it was unusual that a person who wanted to replace a car seat would do so when he could not afford to do it with cash and was forced to make a third-party purchase involving cocaine the day after a murder. R. 384, ll. 3-22; R. 386, l. 10 – 387, l. 13.

The trial court held Simonelli's testimony was relevant to show Appellant replaced the seat in his vehicle and to show motive under SCRE 404(b). Additionally, the court held "the probative value far exceeds the prejudicial effect" to Appellant because the testimony regarding cocaine and Appellant's alleged prior drug dealing was not similar to the offense for which he was on trial. R. 388, l. 25 – 390, l. 20.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." SCRE Rule 404(b); See State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). To be admissible, alleged prior bad acts that are not the subject of conviction must be proved by clear and convincing evidence. State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998); State v. Smith, 300 S.C. 216, 218-219, 387 S.E.2d 245, 247 (1989). Additionally, the record must support a logical relevance between the prior bad act and the crime for which the defendant is accused. State v. Brooks, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000).

"Further, even though the evidence falls within a Lyle exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." SCRE Rule 403; See State v. Garner, 304 S.C. 220, 221-222, 403 S.E.2d 631, 632 (1991).

Simonelli's testimony that Appellant previously sold him drugs lacked any logical relevance to the murder for which Appellant was accused. See Brooks, 341 S.C. at 61, 533 S.E.2d at 327. *The connection was simply not there.* Besides Simonelli's testimony that Appellant sold him drugs, the only other evidence produced at trial that contributed to the state's farfetched alleged motive was the testimony of Tamekka Williams that the decedent began

selling drugs about a month before his death. See R. 241, l. 20 – 242, l. 8; See also R. 411, l. 21 – 414, l. 4. As Appellant argued at trial, "it's purely unrelated and unsubstantiated conjecture." R. 385, ll. 11-14. There was *no* evidence of a conflict between Appellant and the decedent over alleged drug dealing nor was there *any evidence* of a competition between the two. David White, the only witness to the alleged murder, claimed there was *no arguing* between Appellant and the decedent and that he did not know why Appellant allegedly shot the decedent. R. 300, ll. 3-5.

There was *nothing* in the record to support the inference that the decedent and Appellant were involved in competing drug dealing businesses. Therefore, Simonelli's testimony should not have been admitted under Rule 404(b) to support the state's farfetched theory of motive.

Additionally, the evidence that Appellant allegedly offered to trade cocaine in exchange for the purchase of the front passenger seat was *not* "necessary to a full presentation of the case" as this Court held. The state was able to present evidence that Appellant had called numerous junk yards looking for a front passenger seat to a 2006 Dodge Durango and that Appellant ultimately obtained a new front passenger seat for his vehicle from LKQ Automotive within a few days of the murder. The specific testimony regarding Appellant's alleged offer to trade cocaine in exchange for Simonelli putting the seat on a credit card was wholly unnecessary and was simply used by the state to damage Appellant's character.

Not only was there no logical relevance between Appellant's alleged prior drug dealing and the murder for which Appellant was tried, but any probative value of the testimony regarding Appellant's alleged prior drug dealing was substantially outweighed by the danger of unfair prejudice. Appellant was prejudiced because such testimony was destructive to his character and hence his credibility. While Appellant did not testify at trial, he made various statements to law enforcement that were presented to the jury, such as he purchased a new front passenger seat for

his Durango because of burn holes from cigarettes. See R. 428, l. 19 – 429, l. 4. Thus, Appellant's credibility was an important issue in the case.

Moreover, it appears from this Court's brief opinion that the Court may have overlooked our Supreme Court's opinions in State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990), State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990), and State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992).

In Coleman, our Supreme Court held prejudice to Coleman from the admission of evidence that he was a social user of cocaine outweighed any probative value to show Coleman's motive or state of mind at the time of the murder. Despite evidence Coleman was "wired" on the morning of the murder, the Court concluded there was no evidence that Coleman's condition was the result of cocaine use nor was there any evidence in the record to support the inference that the victim and Coleman were involved in a drug transaction. Instead, the Court held the only function of this evidence was to demonstrate Coleman's bad character and thus it granted him a new trial. 301 S.C. at 60, 389 S.E.2d at 660.

In Bolden, our Supreme Court held evidence of Bolden's alleged crack cocaine use in a hotel shortly before the hotel was robbed was prejudicial error when its only function was to demonstrate the defendant's bad character. The Court stated, "[T]here is nothing in the record to indicate a logical relevance between use of crack cocaine during the night before the robbery and the robbery which occurred at 6:10 am the following day." 303 S.C. at 43, 398 S.E.2d at 494-495. The Court further held that even if the testimony was relevant, its probative value was clearly outweighed by its unfair prejudice and thus remanded Bolden's case for a new trial. 303 S.C. at 43-44, 398 S.E.2d at 495.

In Smith, our Supreme Court held evidence of Smith's prior drug use, unrelated to the murder and armed robbery, should have been excluded. Despite considerable evidence of cocaine use during the actual murder and armed robbery, the Court held Smith's *prior* cocaine use was highly prejudicial and "so destructive to [Smith's] character, hence her credibility, that it cannot be held harmless error or cumulative." The Supreme Court reversed Smith's convictions and death sentence and remanded the case for a new trial. 309 S.C. at 446-447, 424 S.E.2d at 498-499.

The facts of Appellant's case are similar to the facts of the above cited cases. Evidence of Appellant's alleged *prior* drug dealing was highly prejudicial, failed to establish any logical motive based on the evidence presented, and was extremely destructive to Appellant's character and credibility. Moreover, it was not necessary for "a full presentation of the case."

Second, this Court incorrectly found Appellant's argument that the trial court erred by admitting a weapon into evidence when there was an insufficient nexus to prove the weapon was involved in the murder was not preserved for appeal. The record demonstrates Appellant objected to the admission of the weapon, offered as State's Exhibit No. 14, on grounds of relevance, lack of foundation, and improper chain of custody. R. 433, l. 22 – 434, l. 4; R. 436, ll. 1-6.

David White, Appellant's co-defendant, claimed he saw the gun Appellant allegedly used to shoot the decedent. White testified, "It was a twenty-two, a twenty-two long. I know what a twenty-two long look like [sic]. It was a twenty-two long, long on the muzzle." R. 283, ll. 23-25. White provided no further details regarding the appearance or characteristics of the weapon. When presented with a gun identified as State's Exhibit No. 14, White stated, "That *looks like* the gun [Appellant] shot [the decedent] with." R. 284, ll. 17-18 (emphasis added). White further claimed

that before Appellant drove him home on the morning of the murder, Appellant stopped at Bacon Bridge Road and "tossed the gun out over the bridge." R. 289, ll. 18-23; R. 293, ll. 1-9.

Allison Greer of the Dorchester County Sheriff's Office testified that the sheriff's office learned of the location of the alleged murder weapon on November 16, 2007 when David White came forward. R. 429, ll. 16-21. Greer was a member of the "dive team" and was "requested to dive the area off of Bacon's Bridge Road where the Ashley River crosses over Bacon's Bridge." R. 429, l. 22 – 430, l. 7. The dive team ultimately located and recovered a twenty-two caliber Browning Buck Mark semi-automatic pistol a few days into the search. R. 430, l. 25 – 431, l. 4. When presented with a firearm identified as State's Exhibit No. 14, Greer testified, "That it *appears to be* the same weapon that we located." R. 433, ll. 14-18 (emphasis added).

When the state subsequently offered State's Exhibit No. 14 into evidence, Appellant clearly objected on grounds of relevance, lack of foundation, and improper chain of custody. R. 433, l. 22 – 434, l. 4; R. 436, ll. 1-6. Based on the solicitor's argument in response, it is apparent the state understood the grounds of Appellant's objection. The solicitor argued the gun was tied to the crime through White's testimony and that it was found in the water at the location where White said the gun was located, clearly attempting to suggest the weapon was relevant and that there was a sufficient nexus. The solicitor also noted that Greer testified the gun appeared to be the gun the dive team pulled out of the water. He concluded that the gun was "*certainly relevant*" and that the state laid a proper foundation for the gun to be admitted into evidence. R. 434, l. 15 – 435, l. 8 (emphasis added).

Appellant further argued that David White was "high on cocaine, freaked out, he was in a dark car," thus implying White was not reliable in his identification of the alleged murder weapon and that the gun was not relevant to the case. R. 436, ll. 8-10.

The trial court sustained the objection finding additional foundation was required. R. 436, l. 13 – 43. Greer then testified that she was present when the firearm was recovered from the river. She claimed the gun removed from the water and firearm identified as State's Exhibit No. 14 both had gold triggers and the handle grips appeared to be the same shape. R. 437, l. 23 – 439, l. 1.

The weapon was ultimately admitted into evidence during the testimony of Detective Zensen of the Dorchester County Sheriff's Office. Zensen testified that she took possession of the weapon immediately after it was recovered from the water and transported the gun directly to SLED. R. 473, l. 10 – 474, l. 25. She identified State's Exhibit No. 14 as the gun recovered from the river. She further claimed the weapon had a "very distinctive" green neon sight and a "very distinctive" gold trigger. R. 472, l. 25 – 473, l. 9; R. 474, ll. 23-25.

When the state sought to admit the weapon, Appellant properly renewed his objection stating, "I'll just renew my objection, Your Honor, *on the same grounds*." R. 475, ll. 18-23 (emphasis added). The trial court simply ruled, "Very well. Overruled." App. 475, l. 23. The court therefore presumably overruled the objection based on all grounds raised by Appellant, including lack of relevance, lack of foundation, and an insufficient chain of custody. Consequently, this issue was properly preserved for appellate review and this Court respectfully overlooked the parts of the record that indicate Appellant objected on grounds of relevance and that the weapon was not properly connected to this murder.

Turning to the merits of the issue, the trial court erred by admitting the firearm recovered by law enforcement from the Ashley River into evidence because there was an insufficient nexus to prove the weapon was involved in the murder thereby making the firearm irrelevant.

"Evidence which is not relevant is not admissible." Rule 402, SCRE. Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to

the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Additionally, even relevant evidence should be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Elders, 386 S.C. 474, 486, 688, S.E.2d 857, 863 (Ct. App. 2010) (quoting State v. Gilchrist, 329 S.C. 621. 630, 496 S.E.2d 424, 429 (Ct. App. 1998)).

David White, the *only* alleged witness to the murder, testified that the gun Appellant allegedly used to shoot the decedent was a "twenty-two long." R. 283, ll. 23-25. White provided no further details. White did not testify about the "very distinctive" neon green sight nor did he mention the "very distinctive" gold trigger. See R. 473, ll. 7-9. As Appellant argued at trial, White was high on cocaine and "freaked out" on the night of the alleged murder. See R. 436, ll. 8-10. White testified he did not see any guns before the alleged shooting and that after the alleged shooting he "was in shock" and his "mind went blank." R. 280, ll. 14-17; R. 282, l. 11 – 283, l. 20. Additionally, the incident allegedly took place in the early morning hours when it was dark outside. See R. 281, ll. 14-20. The lack of description of the alleged murder weapon provided by White coupled with the circumstances surrounding the incident, including the fact that it was dark outside and that White was high on cocaine and "freaked out," indicate that it was highly unlikely White could reliably identify the alleged weapon.

The only other information White provided to law enforcement was that Appellant allegedly stopped on Bacon Bridge Road on the night of the murder and "tossed the gun out over the bridge." R. 289, ll. 18-23; R. 293, ll. 1-9. Even if White's testimony that Appellant threw the gun over Bacon Bridge is to be believed, there is no reliable evidence that the weapon recovered by law

enforcement and presented at trial as the alleged murder weapon was the actual weapon used to inflict the injury upon the decedent.

Parnell, the firearms and tool mark expert, was unable to determine whether the bullet recovered from the decedent's body was or was not fired from the weapon entered into evidence as the murder weapon because the bullet was so badly damaged. R. 612, l. 21 – 613, l. 9.

Additionally, there was no testimony that Appellant owned a similar gun or had been seen with a gun prior to the alleged murder. Tamekka Williams testified that she told detectives she had never seen Appellant with a gun. R. 237, ll. 18-20. Shaquanda White also testified that she told detectives she had never seen Appellant with a weapon. R. 265, ll. 9-11. There was no evidence that Appellant owned the gun recovered by law enforcement in the Ashley River or that he had ever previously had the gun in his possession. In short, there is nothing tying Appellant to that weapon or to this murder besides David White's testimony that it "looks like" the gun Appellant used to allegedly kill the decedent. See R. 284, ll. 17-18.

Because there was no reliable evidence connecting the twenty-two caliber Browning Buck Mark semi-automatic pistol to the murder of Craig Michael Canady or to Appellant, the trial court should have ruled the gun was inadmissible based on a lack of relevance. Weapons with no connection to the crime are not admissible. See State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010). Moreover, because there was an insufficient nexus connecting the weapon to the murder, its admission was unduly prejudicial to Appellant as it led the jury to believe that White's testimony was credible because law enforcement discovered the alleged murder weapon where White said it would be located. Since White was the sole witness to the alleged murder, his credibility was crucial to the state's case.

Respectfully, this Court should grant rehearing and not only find this issue preserved for review, but also hold the trial court erred by admitting State's Exhibit No. 14 into evidence.

Third, this Court incorrectly held the trial court did not err in failing to suppress evidence derived from a search warrant issued on September 27, 2007 for Appellant's 2007 Dodge Durango when the search warrant was based on deliberately false information or an extremely reckless statement.

Appellant moved prior to the start of trial to suppress all evidence seized as a result of a search warrant issued on September 27, 2007 for his 2007 Dodge Durango on grounds that the warrant was issued in violation of S.C. Code §17-13-140 and the Fourth Amendment. R. 133, ll. 11-16. Law enforcement executed a valid search warrant on Appellant's Durango on September 17, 2007 and found no items of evidentiary value. Officers subsequently obtained a second search warrant for the vehicle on September 27, 2007 citing the same grounds for probable cause that led to the first search warrant along with adding new information to the affidavit that was false. R. 133, l. 17 – 134, l. 21. Appellant argued that the new information in the affidavit that was false was the sentence, "Officers obtained several verbal and written statements that Donsurvi Chisolm [Appellant] purchased a passenger side front seat for a Dodge Durango on September 14, 2007." R. 138, l. 3 – 139, l. 19. Appellant stated, "[I]t was never confirmed that a purchase took place on September 14, 2007." R. 139, ll. 4-5.

Appellant argued that the affiant, Detective Mike Giglio of the Dorchester County Sheriff's Office, "willfully and knowingly with reckless disregard for the truth submitted false information on an affidavit for a warrant, and the warrant should therefore be deemed invalid, and its fruits excluded from use in court under the exclusionary rule under the U.S. Constitution." R. 137, ll. 4-9.

Detective Giglio testified that, through verbal and written statements from various employees at LKQ Auto Parts and a parts invoice, the Dorchester County Sheriff's Office learned that a customer identified as Appellant attempted to purchase a gray "right front seat" pulled from a 2006 Dodge Durango on September 14, 2007. R. 143, l. 19 – 144, l. 1; R. 145, l. 7 – 146, l. 4. One of the written statements obtained stated, "His dad called in with credit card to pay for seat. Credit card declined. So customer came back the next day and paid cash." R. 151, ll. 6-10. Detective Giglio testified that the business, however, could not produce a final sales receipt and thus it was unclear whether the front passenger seat was purchased by Appellant legally with cash on September 15, 2007 or whether it was stolen on that day. R. 152, l. 16 – 155, l. 24; R. 164, ll. 1-17; R. 166, l. 17 – 167, l. 11. Regardless, it was undisputed that a seat was not purchased on September 14, 2007. R. 151, ll. 6-16.

Detective Giglio claimed he relied on this information when he obtained the second search warrant for Appellant's Dodge Durango. R. 164, l. 22 – 165, l. 12. He further maintained that the statement in the affidavit in support of the second search warrant that stated the seat was purchased on September 14, 2007 was a "clerical error" and it should have stated September 15, 2007. R. 165, l. 17 – 166, l. 4. Giglio claimed he did not know he made a mistake regarding the date until Appellant pointed it out to him. R. 166, ll. 5-10.

After Detective Giglio testified, Appellant cited State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975), and argued the officer "provided false information to a magistrate with absolutely no intention of showing good faith effort to correct it. This information was sworn to and taken by the magistrate as true. I'm sure if [the magistrate] knew it was a lie the warrant would never have been issued, and since we know as much now, I ask for this warrant to be suppressed." R. 168, l. 1 – 169, l. 7.

The trial court found the affidavit was not given in bad faith or recklessly and that it was supported by probable cause. It therefore denied Appellant's motion to suppress. R. 169, l. 14 – 170, l. 15. This was error.

The Fourth Amendment to the United States Constitution, made applicable to the States by way of the Fourteenth Amendment, protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV. Additionally, under S.C. Code Section 17-13-140, a warrant should be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant."

"The Fourth Amendment itself provides no remedy for a violation of the warrant requirement." State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) (internal citations omitted). "However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." Id.

Under South Carolina case law, the proper test for dealing with inaccuracies in an affidavit in support of a search warrant is as follows: "Did the officer . . . intentionally, recklessly, or in bad faith recite facts he knew or should have known to be erroneous, without correcting the error by additional affidavit or affirmation, to obtain the issuance of a warrant?" Sachs, 264 S.C. at 556, 216 S.E.2d at 509.

Additionally, in State v. Missouri, 337 S.C. 548, 556, 524 S.E.2d 394, 398 (1999), our Supreme Court invalidated a search warrant where it found "the combination of the police officer's

deliberate falsehood and his omission of critical facts pollute the affidavit to the extent that a magistrate could not have found that probable cause existed to issue the search warrant."

Appellant established during the suppression hearing that Detective Giglio's statement in the affidavit in support of the second search warrant that "Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on September 14, 2007" was false. The evidence produced at the suppression hearing indicated the Dorchester County Sheriff's Office learned from employees at LKQ Auto Parts that a passenger seat was pulled from a 2006 Dodge Durango for a customer identified as Appellant on September 14, 2007. However, there was no evidence that the seat was actually purchased on that date. Instead, there was very *questionable* evidence regarding whether the seat was purchased by Appellant on the following day, September 15, 2007. The sheriff's office had no evidence to confirm Appellant or anyone else actually purchased a front passenger seat on September 15, 2007.

It is likely Detective Giglio either intentionally or recklessly made the statement that Appellant purchased a new front passenger seat on September 14, 2007 when he knew or should have known through investigation that the information was false. Without the false statement, there was no new additional probable cause to support a second search warrant. Therefore, the evidence seized as a result of the warrant should have been suppressed under the exclusionary rule. Respectfully, this Court overlooked significant points when it affirmed the ruling of the trial court and should grant rehearing to address this matter.

Fourth, this Court erred by affirming the trial court's refusal to allow Appellant to question Detective Zenson about DNA testing performed on a seized firearm, specifically as it pertained to the decedent, Craig Michael Canady, since Appellant had the right to show that the detective's

answers were inconsistent in this regard. The evidence was also relevant to the thoroughness and accuracy of the investigation.

Detective Zensen of the Dorchester County Sheriff's Office testified extensively regarding her involvement in the investigation of the death of Craig Michael Canady. She was the crime scene technician who processed the scene where the body was discovered on Clubhouse Road. R. 450, l. 17 – 451, l. 11. She also assisted in the execution of a search warrant on Appellant's Dodge Durango and transported the alleged murder weapon to SLED after it was recovered from the water. R. 458, ll. 4-17; R. 472, l. 25 – 474, l. 25.

Throughout her testimony, Zensen testified about various items that were sent to SLED for testing, specifically for comparison against the DNA of the decedent, including swabs, hair, and fingernail clippings, among numerous other items. Towards the end of cross-examination, Appellant asked Zensen whether she recalled anything else being sent to SLED for testing. Zensen responded, "No." R. 515, l. 12 – 516, l. 2. At this point, Appellant attempted to impeach Zensen with evidence that on January 7, 2008 a request was sent to SLED to compare a twenty-five caliber automatic handgun against the DNA of Craig Michael Canady. The state objected on grounds of relevance. R. 516, l. 1 – 517, l. 3.

The state argued the firearm Appellant wished to question Zensen about was recovered from an unrelated individual at some other time and has "no connection to the crime whatsoever." R. 517, ll. 10-13. Appellant argued he should be able to impeach Zensen with the SLED report "since the question was not answered correctly I would, at least, like to straighten out the mis-statement and the false representation . . ." R. 518, ll. 13-21. Appellant said the twenty-five caliber handgun was recovered two months after his arrest and was listed under the same SLED number. R. 520, ll. 20-24; R. 522, ll. 3-6.

After further discussion, the court ruled, "This is absolutely not impeachment. If you want to ask her directly was there another gun at some later time that there was DNA testing done with regards to the alleged victim, we'll talk about that, but this is not impeachment." R. 521, ll. 8-22. The court said the handgun Appellant referred to was listed under a different SLED number than the evidence in this case and that the testing was completed five months later. R. 521, ll. 8-22; R. 522, ll. 7-10. The court also said the line of questioning "up to that point had been items that this witness had removed from your car and had been involved in this investigation. And there's no question in my mind, but that was the focus of your questions. I do not believe that it is fair impeachment for you to now ask her about a DNA comparison that occurred some five, six months later . . . " R. 523, l. 21 – 524, l. 16. The court concluded that Appellant could question Zensen about DNA testing performed on the twenty-five caliber handgun if he could prove relevance, but not as impeachment. R. 519, ll. 16-22; R. 521, l. 24 – 522, l. 2; R. 524, l. 17 – 525, l. 2.

Appellant maintained the evidence was relevant because the weapon was recovered about two to three months after Appellant was arrested from an individual acquainted with the decedent who lived in the very apartment complex where the murder allegedly occurred and was sent to SLED for DNA comparison testing to the decedent. Appellant reasoned the evidence was relevant because if the alleged murder weapon was already found then law enforcement would have no reason to investigate another firearm. R. 525, l. 3 – 526, l. 6. Appellant argued:

> MR. CHISOLM: My co-defendant's daughter, Shaquanda White, who took the stand, who's testified already.
>
> THE COURT: Yes.
>
> MR. CHISOLM: Her boyfriend at the time was named Siquan Moody. That's who - -
>
> COURT REPORTER: Who?

> MR. CHISOLM: Siquan Moody. The person that Tamekka Williams got on the stand and said that Red was with the last time she saw him on Thursday, and after he left Siquan, Red came with me. I told detectives after Red left me he went back to Azalea Park. Azalea Park is where Siquan Moody stays at. The person that they recovered that gun from is Pierre Moody, that's Siquan Moody's younger brother. They're testing DNA from Craig Michael Canady against Pierre Moody's gun and they're all in the Haven Oaks - - I'm sorry - - they're all in the Azalea Park area, and this is after, like I said, Your Honor, we're already under arrest. But they're still investigating that Red went to Azalea Park and Siquan Moody and Pierre Moody, and they're testing his DNA exactly two to three months after David White said this happened, I did this, after David White gave them a weapon that has never been proven to be the murder weapon. If all that was true, why are they still investigating Siquan Moody's little brother against Craig Michael Canady's DNA on his gun. . ."

R. p. 525, l. 3 – 526, l. 2.

The court ruled the evidence was not relevant because according to the SLED report, the handgun recovered at the later time was a "semi-automatic pistol which could not fire the bullet that was removed from the body of this alleged victim." R. 527, l. 24 – 529, l. 4.

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE; See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) and State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986).

Appellant should have been permitted at trial to impeach Detective Zensen with the SLED report that a second firearm was sent to SLED for comparison testing against the DNA of the decedent. By failing to allow Appellant to impeach Zensen, her inaccurate statement remained uncorrected in the minds of the jurors. The jury was led to believe that all the potential evidence

that was sent to SLED had been discussed at trial when the truth was that law enforcement was investigating a second firearm as being involved in the murder.

Additionally, the fact that law enforcement was examining another firearm in connection with the case was relevant to the thoroughness and accuracy of the investigation into the death of Craig Michael Canady. The fact that law enforcement was investigating a second weapon indicated the officers from the Dorchester County Sheriff's Office were not firmly convinced that the gun recovered from the Ashley River was the murder weapon and that the officers considered that someone else may have been involved in the murder. This is relevant evidence weakening the case against Appellant and Appellant should have been permitted to question the detective about this relevant evidence to properly defend himself.

Lastly, this Court erred by holding the trial court properly allowed Appellant to represent himself despite the fact that the trial court failed to inquire about the nature of the conflicts Appellant was having with his attorney, did not warn Appellant that a murder conviction in Dorchester County would constitute an aggravating circumstance for the state to seek the death penalty in his Berkeley County murder case, and was very vague about the dangers and disadvantages of self-representation.

An *in camera* ex-parte hearing was held on Appellant's request to represent himself. Appellant was represented by John Loy at the time. R. 1; R. 4, ll. 1-7. It was apparent there were conflicts between Appellant and defense counsel Loy. Appellant offered, "I don't want to waste the court's time arguing the conflicts and issues that me and Mr. Loy have together. I would like to proceed pro se as of this day February 11, 2011." R. 7, ll. 16-19.

The judge said she learned Appellant was being housed in Berkeley County, and that he had to be transported to Dorchester County for this hearing. She maintained that she needed to know if

Appellant was using his motion for purposes of delaying the trials. Appellant told the judge, in response to her question, that his Berkeley County trial had not yet been scheduled. R. 9, ll. 14-24.

Significantly, the subsequent Berkeley County case was also a murder trial. However, that important fact was never raised during this waiver hearing. Neither was the fact that if Appellant was convicted of murder in Dorchester County that that conviction would constitute a "prior murder conviction" which would allow the state to seek -- or legitimately threaten to seek -- the death penalty in Berkeley County.[1] See S.C. Code Ann. § 16-3-20(C)(a)(2); R. 9, l. 10 – 10, l. 9.

During the colloquy, Appellant told the judge he was married with four children and that he had one year of college. Appellant was never asked where he went to college and later told the judge he either graduated from high school or "got [his] GED" in response to a very open-ended question. R. 11, l. 19 – 13, l. 5.

Appellant had been in the service and he spent ten months in Afghanistan. Appellant also told the judge he was in "Special Forces," and the judge interjected that she understood Appellant could not talk about what occurred in Special Forces. R. 13, l. 7 – 15, l. 2. Appellant had also worked with heavy machinery and most recently worked at a Sonic restaurant and then a McDonald's. However, his murder charge had hindered his ability to become employed. R. 12, l. 2 – 21, l. 10. Appellant denied he had been treated for post-traumatic stress syndrome or had received any mental health treatment. R. 21, ll. 14-16.

[1] See State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991) (in context of statutory mitigating circumstance of absence of significant history of prior criminal conviction involving use of violence against another person, word "prior" would be construed to mean prior to trial, rather than prior to time of crime for which defendant was on trial). See also State v. Locklair, 341 S.C. 352, 370, 535 S.E.2d 420, 429 (2000) (same principle).

The judge told Appellant that his attorney, John Loy, was her friend, "and he is as fine a lawyer as there is for sure in this state, probably this country, you understand that?" Appellant said he did understand. R. 23, l. 16 – 24, l. 4.

The judge said that one of her prepared questions dealt with possible defenses to the charge. She mentioned self-defense, but then said, "We're not going to talk about your defenses. We're just not going to do that. I'm not going to let you go into your factual basis. We're not going to do that. I'm not going to let you do that." Appellant did not make any "audible response." R. 27, l. 22 – 28, l. 5.

The judge only mentioned Appellant's Berkeley County charges in passing stating they were "not helpful." R. 28, l. 25 – 29, l. 10. She said she did not need to know any more about the Berkeley charge although it was potentially "problematic." R. 29, ll. 11-21.

The judge very briefly told Appellant he would have to "comply with the rules . . . rules of evidence, the court rules." R. 32, ll. 10-18. She said she thought Appellant was proceeding with his eyes open, but then stated:

> I don't think I understand the "why" [you want to represent yourself] part of it. I think I don't like it. But that - - the judge's pleasure with it is - - doesn't get to be factored in. I don't get a vote. You do. I don't.

R. 35, ll. 10-13.

Lastly, the judge told Appellant that he was very bright and that he probably could have gone to law school. She told Appellant that she believed he was capable and aware of what he was doing. R. 36, ll. 2-9.

A defendant may waive his right to counsel and proceed *pro se*, but only if it is clear on the record that he understands the dangers and disadvantages of self-representation. See Faretta v. California, 422 U.S. 806 (1975). Here, Appellant was only told in a vague manner of the dangers

and disadvantages of self-representation. Appellant was advised in a very brief fashion that he would have to comply with the rules of evidence, and the rules of court. There is nothing in the waiver record to show Appellant understood the rules of evidence or what court rules the judge was referring to during the colloquy.

The judge did not make any effort to find out the source of the friction between defense counsel Loy and Appellant. Many defendants before trial express problems with their defense attorneys which are solved by the trial judge engaging the defendant in a *specific colloquy about the nature of the problem.*

Appellant had a pending murder charge in Berkeley County at the time of the waiver hearing. A murder conviction in Dorchester County could be used, and was used, as an aggravating circumstance that would justify the state seeking -- or threatening to seek – the death penalty against Appellant in a future trial in Berkeley County. See S.C. Code §16-3-20 (C)(a)(2) (the aggravating circumstances that "the murder was committed by a person with a prior conviction for murder.") Yet, the Berkeley County murder case was only mentioned in passing during the waiver hearing to impress upon Appellant the seriousness of what he was doing.

Conversely, in State v. Barnes, 407 S.C. 27, 31, 753 S.E.2d 545, 548 (2014), our Supreme Court ruled the defendant would have been allowed to represent himself where he "demonstrated an understanding of the process of capital *voir dire*, stated his intention to pursue a third-party guilt defense at trial and discussed relevant case law, the burden of proof, and his right to testify." The defendant in Barnes also answered the judge's detailed inquiries about the problems with his defense attorneys and the "trust issues" about why he felt betrayed. Id. at 32, 753 S.E.2d at 548. The defendant also demonstrated he had read relevant case law and showed some understanding of the rules of evidence when questioned by the trial judge. Id. at 33, 753 S.E.2d at 548.

None of the factors in Barnes which evidenced an intelligent waiver of the right to counsel, and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record before this Court.

Appellant is similarly situated to the defendant in State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010) where our Supreme Court held the record did not demonstrate a knowing and intelligent waiver of the right to counsel with a full understanding of the dangers and disadvantages of self-representation. See Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990); Cf. State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997); State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010). Respectfully, this Court should have held the trial court erred by allowing Appellant to waive his right to counsel and proceed *pro se*.

Because this Court overlooked significant points in the record and case law when affirming Appellant's conviction, rehearing on all five issues presented should be granted.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

Robert M. Dudek
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 12th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT

APPELLATE CASE NO. 2011-200186

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above captioned case has been served upon Melody J. Brown, Esquire, Office of Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of November, 2015.

Lara M. Caudy
Lara M. Caudy
Appellate Defender

Robert M. Dudek
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of November, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 13, 2015

Ms. Lara Mary Caudy, Esquire
PO Box 11589
Columbia SC 29211-1589

RECEIVED
NOV 13 2015
SC OFFICE OF
APPELLATE DEFENSE

Re: The State v. Don-Survi Chisolm
Appellate Case No. 2011-200186

Dear Counsel:

This will acknowledge receipt of your Petition for Rehearing.

By copy of this letter, opposing counsel is requested to file a return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
John W. McIntosh, Esquire
Donald J. Zelenka, Esquire
David Michael Pascoe, Jr., Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Don-Survi Chisolm, Petitioner.

Appellate Case No. 2011-200186

Unpublished Opinion No: 2015-UP-501

RETURN TO PETITION FOR REHEARING

This Court issued an unpublished opinion in the captioned case on October 28, 2015, affirming Petitioner's murder conviction. *State v. Chisolm,* Unpublished Opinion No. 2015-UP-501 (S.C.Ct.App. filed October 28, 2015). On November 12, 2015, Petitioner filed a petition for rehearing. By letter dated November 13, 2015, this Court requested Respondent file a return to the petition. Pursuant to Rules 221 and 240, SCACR, and at the request of the Court, Respondent now makes a return to the petition. Respondent submits the petition for rehearing should be denied. Essentially, Petitioner has simply presented again his five (5) issues from the brief. These issues were thoroughly briefed and the Court heard argument on September 15, 2015. The Court

simply rejected Petitioner's arguments on Issues, 1, 3, 4 and 5, and found Issue 2 procedurally barred from review on the merits. (Opinion, p. 2-3). Petitioner has shown no cause for rehearing. See Rule 221 (a), SCACR ("petition for rehearing ... shall state with particularity the points supposed to have been overlooked or misapprehended by the court." *See also Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("The purpose of a petition for rehearing is not ... to have the case tried in the appellate court a second time.") (quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999)). At any rate, his argument fails.

1. Petitioner first argues the Court erred in finding no error as to admission of Mr. Simonelli's testimony that Petitioner had previously sold him drugs and complains the Court overlooked the factually "[*t*]*he connection was simply not there.*" (Petition, p. 3) (emphasis in original). He claims "the state's farfetched theory of motive" wherein there was evidence which would support an inference that the motive dealt with drug territory, was unsupported by the record as there was not direct testimony on same; and, that the evidence was not otherwise necessary for a "full presentation of the case." (Petition, p. 4). Finally, he argues the evidence was unfairly prejudicial as Petitioner's credibility was at issue and the evidence "was destructive to his character and hence his credibility." (Petition, p. 4). Petitioner argues in addition to overlooking these factual issues, the Court also overlooked Supreme Court precedent, specifically the cases of *State v. Coleman; State v. Bolden;* and, *State v. Smith*. (Petition, p. 5). The record, briefing and argument in this case does not support Petitioner's assertions.

In the referenced opinion, this Court concluded the trial judge did not abuse her discretion in admitting the evidence of prior knowledge of the defendant through drug

dealing as it furnished context for the presentation of the case, and was not more prejudicial than probative. (Opinion, p. 2, para. 1). The record supports that decision.

The reference to Petitioner selling drugs to Mr. Simonelli explained the details of the request Petitioner made to him in an effort to quickly obtain a replacement seat for this SUV where the murder occurred. Essentially, Petitioner held out a significant carrot to obtain the replacement seat quickly, enticing Mr. Simonelli with more drugs to buy the replacement seat immediately. The trial judge reasonably found the testimony relevant as to the purchase and payment by cocaine, and ruled she would allow the argument on motive, "though motive is not an element of the offense...." (R. p. 388, line 25 - p. 389, line 15). The trial judge considered the prejudicial effect compared to the probative value. She found cocaine to be a major part of the testimony already given, "what brought them together," and reasoned the case was not a similar drug offense which may increase the prejudicial value but does not in this case. (R. p. 390, lines 3-16). Thus, the prior drug transactions – which were referenced only briefly and without collateral details, see R. p. 411, lines 24 – were part and parcel of Petitioner's request to Mr. Simonelli and were properly admitted.

Moreover, Mr. Simonelli explained part of the deal was to forgive the past debt and "trade some more cocaine or something like that." (R. p. 412, line 17 – p. 413, line 4). Petitioner does not complain that contemporaneous offer to "trade some more cocaine" was improperly admitted..[1] Not only does this show a lack of prejudice, this fact weaves an even stronger connection to the possible drug turf war theory than the past

[1] Additionally, Mr. Scully White's testimony that Petitioner also suggested they commit an armed robbery was admitted without objection, and would also bear negatively on character. (See R. p. 280, lines 1-13).

sales alone. As the trial judge noted, the evidence demonstrated "an undeniable connection" in the precise area (in and round Haven Oaks), and testimony the victim had only just recently begun selling drugs in that area. This allows a reasonable inference of motive. (See R. p. 389, lines 16-24). Even so, the past sales show an existing relationship which strengthens and gives context to the request to purchase the replacement seat. In short, the testimony was admissible to establish material facts – 1) possible motive; and 2), the fact the seat was replaced due to the victim's blood being in the seat, not mere cosmetic reasons as Petitioner offered. Respondent agrees with Petitioner that to avoid being merely improper character evidence, "the drug use must have some relevant connection to the crime charged." *State v. Dickerson*, 341 S.C. 391, 397, 535 S.E.2d 119, 122 (2000) (*citing State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999) ("The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused.")). However, contrary to Petitioner's argument in the petition for rehearing, the logical connection exists and arises from Petitioner's own statements to Mr. Simonelli. Because the past drug transactions explain the attempt to pay a current drug debt by helping Petitioner to purchase the seat, the evidence is admissible as *res gestae*. *Dickerson*, 341 S.C. at 400-401, 535 S.E.2d at 124. *See also State v. King*, 334 S.C. at 512, 514 S.E.2d at 582 ("The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred.").[2]

---

[2] This theory requires "the temporal proximity of the prior bad act ... be closely related to the charged crime." *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 736 (Ct. App. 2014). Mr. Simonelli testified that he had an existing relationship with Petitioner as his drug dealer at the time of the request. (R. p. 413, lines 20-25). This would satisfy the temporal requirement.

Further, as the trial judge properly reasoned, the possibility of unfair prejudice did not outweigh the great probative force of the evidence. Cocaine use was already a part of the narrative – Mr. White testified that he and Petitioner used cocaine, and they were searching for cocaine the night of the murder. (See R. p. 273, lines 10-15; p. 277, lines 2-9). In fact, Mr. White testified that the cover story was to be that they "rode around, got high." (R. p. 289, lines 5-17). Further still, the trial judge reasoned that this was a crime with violence not a similarly situated drug charge, which tended to reduce the danger of unfair prejudice. *See, e.g., State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) ("When ... the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced."). This Court correctly found no exceptional circumstance which would support reversal in light of these facts. (Opinion, p. 2, para. 1).

Petitioner's further argument that this Court failed to consider *State v. Coleman, State v. Bolden,* and *State v. Smith,* (Petition, p. 5), lacks merit for several reasons. First, Petitioner presented this cases and offered similarities in his brief. (FBOA, pp. 9-10). Second, these cases were referenced in oral argument to this Court. Third, the cases simply do not apply. The reference to prior drug dealing was specifically a part of this case by virtue of Petitioner's own offer. These cases do not support Petitioner's position.

Finally, even if this Court had found error, such an error could only be harmless for two distinct reasons. First, the connection to drug use was already a part of the record with Mr. White's testimony. In this sense, the additional drug testimony was harmlessly cumulative. *See State v. Price*, 368 S.C. 494, 499-500, 629 S.E.2d 363, 366 (2006) (appellant unable to show prejudice where inadmissible hearsay merely cumulative).

Second, the record shows overwhelming evidence of guilt, not the least of which is the eyewitness account of the shooting and dumping of the body and gun – testimony that was systematically corroborated by the forensic and investigative evidence. (See R. p. 282, line 14-295, line 15; p. 430, line 2-p. 431, line 4). There is also the fact Petitioner replaced the passenger seat, cut out the passenger side seatbelt, and blood was found on the center console despite the clean-up efforts. (R. p. 392, line 8 – p. 395, line 21; p. 401, line 1 – p. 402, line 9; p. 502, line 11- p. 504, line 25; p. 533, lines 8-18). The evidence is solid, and supportive of guilt; thus, if there is any error in admitting the instant testimony, it could only be harmless.

However, this Court reasonably found the trial judge did not abuse her discretion in admitting the evidence in these discrete circumstances. Rehearing is not warranted.

2. Petitioner next contends the Court erred in concluding the admission of the weapon issue was not preserved for appeal. (Petition, p. 6). (See Opinion, p. 2, para. 2). The record, though, well-supports the Court's finding.

It is well-settled that to preserve an issue for review, the issue must be raised to and ruled upon by the trial judge. *See, e.g., State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Petitioner argued lack of foundation, specifically chain of custody:

> Your Honor, there's nothing particularly unique about this weapon. How can she be so sure that that's the same weapon we're talking about. I object. No foundation.

(R. p. 434, lines 1-4).

The trial judge considered lack of foundation, specifically chain of custody:

> ... I would have no concern if there was a serial number identified at the scene where it was found ... I'm a little bit concerned about that. Of course, there hadn't been any kind of chain of custody. I don't even know where it's been kept.

(R. p. 435, lines 9-16).

Petitioner argued a failure in the chain of custody. He also argued the evidence from Mr. White was insufficient as "he was high on cocaine, freaked out, he was in a dark car" and added the divers had "found another gun inside the lake as well" which was not connected to the case. (R. p. 436, lines 1-12). (See also R. p. 430, lines 17-24). Detective Greer confirmed her testimony was it appeared to be the gun recovered on the second dive. (R. p. 436, lines 22-23). The trial judge ruled, "I need more foundation." (R. p. 436, line 24).

Thus, both the objection and the ruling were based upon sufficiency of the evidence in proof of the chain of custody as to the gun recovered on the second dive. There was no argument or objection to relevance. (See also R. p. 475, lines 18-23, trial judge admitted the gun over the same objection to foundation). Consequently, the argument on connection to the murder is procedurally barred.

Petitioner also argues merits of the issue; however, an alternative merits analysis is unnecessary. Even so, the record shows there was no error. Mr. White, the witness to the murder, testified Petitioner shot the victim with a twenty-two long gun and subsequently threw the murder weapon into the river from Bacon Bridge. The weapon admitted was recovered from that site and shared the same caliber – the caliber having been determined from the bullet retrieved at autopsy. (See R. p. 282, line 14 – p. 289, line 23; p. 430, line 2 – p. 431, line 4)..[3]

---

[3] Further, evidence that Petitioner had a similar gun to that used to kill the victim would be admissible regardless of whether the actual gun used in the murder is recovered. *See State v. Gillian*, 373 S.C. 601, 610, 646 S.E.2d 872, 877 (2007) ("The burglary evidence was presented in an effort to show the identity of the perpetrator by

Lastly, for all the reasons listed above, the record demonstrates the evidence of guilt was solid and overwhelming. Thus, if there was any error in admitting the instant testimony, it could only be harmless.

However, the record fully and fairly supports that the issue presented is different than the issue raised below and is procedurally barred from review. *Dunbar, supra.* Rehearing is not warranted.

3. Petitioner next contends the Court erred in not finding that the search warrant contained "deliberately false information or an extremely reckless statement." (Petition, p. 11). This Court found no error in the trial judge's denial of the motion to suppress, citing cases where suppression was not warranted if probable cause was shown when the incorrect statements are omitted from the analysis. (Opinion, pp. 2-3, para. 3). The Court's decision is well-supported by precedent and the facts of this case.

It has long been established that "[m]ere error in the facts relied upon does not offend the protection sought to be achieved by the warrant requirement." *State v. Sachs*, 264 S.C. 541, 556, 216 S.E.2d 501, 509 (1975). The Court eschewed the notion to the contrary reasoning "[h]indsight invalidation of the warrant would be incompatible with the legitmate demands of law enforcement." *Id.*

---

showing that petitioner was in possession of a stolen gun that was consistent with the type of weapon used to kill the victim."); *State v. Pruitt*, 260 S.C. 396, 401, 196 S.E.2d 107, 109 (1973) ("The murder weapon was never discovered but there was evidence to the effect that appellant had upon him the night of the murder a pistol other than the one he gave the law enforcement officers; that on the afternoon before the murder he had obtained by purchase a package of bullets, which did not fit the gun he gave to the officers, but which were similar to the one offered in evidence, and scientific tests showed that the composition of the bullet offered in evidence was similar to the composition of the slugs found in the bodies of the two victims."). Further, the gun could still be admitted as a demonstrative aid. Thus, the danger of any unfair prejudice was minimal.

Detective Giglio in the pre-trial hearing reviewed the statements supporting the affidavit in detail. In particular, he reviewed the statement of Mr. Johns who indicated an attempt was made on the 14th when a card was decline, and "customer came back the next day and paid cash." (R. p. 151, lines 6-16). The second statement indicated that nothing was actually purchased. (R. p. 151, lines 17-20). However, Detective Giglio did not know there was a "clerical" error concerning the dates 9/14 and 9/15, (R. p. 157, lines 8-24; 165, line 24 – p. 166, line 4); and had confirmation from a photograph from the first search that the seat – whether purchased or obtained otherwise – was in Petitioner's vehicle, (R. p. 166, lines 21 – p. 167, line 16). The fact the first statement by Mr. Johns was factually inaccurate as to actual purchase falls specifically in line with the caution in *Sachs* that the eventual disproof of the facts does not invalidate the warrant. The facts neither show an intentional assertion of a known false fact nor recklessness in making such assertion. At any rate, the probable cause was not the purchase (or theft) of the seat but possession of the seat. The actual method of possession was never fully uncovered, but, the actual possession was firmly established..[4] Thus, probable cause is shown. *See*

---

[4] The evidence certainly supports the trial judge's ruling that the officers acted in good faith. They depended on statements from LKQ personnel, the pulled parts from the junk Durango, and cell phone records to confirm contact between Petitioner and LKQ. (See R. p. 143, line 23 – p. 145, line 23; p. 151, lines 6-16; p. 547, line 10- p. 548, line 10). *See Davis v. United States,* ___ U.S. ___, 131 S.Ct. 2419, 2427 -2428 (2011) (affirming continued application of "good faith exception," reasoning: "When the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs ... But when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful, ... or when their conduct involves only simple, 'isolated' negligence, ..., the ' " deterrence rationale loses much of its force," ' and exclusion cannot 'pay its way.'"). This Court has also underscored: "the court may not order suppression simply because the officer made a false statement in, or omitted key facts from, an affidavit supporting a search warrant" rather, the appellant must show the statements were material and affected the finding of probable cause. *State v. Robinson*, 408 S.C. 268, 274, 758

generally State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976) ("Search warrants are constitutionally preferred and in determining whether they should issue, magistrates are concerned with probabilities and not certainties. .... specific [information] by a reliable citizen viewed in a common sense fashion establishes probable cause for the issuance of the warrant."). Rehearing is not warranted.

4. Petitioner next contends the Court erred in limiting the cross-examination of Detective Zenson on an unrelated matter. (Petition, p. 14). He claims it was proper impeachment that should have been allowed. (Petition, p. 17). Additionally, he claims the evidence was "relevant to the thoroughness and accuracy of the investigation into the death of Craig Michael Canady." (Petition, p. 18). Petitioner's arguments fails.

As a first matter, Petitioner fails to show a false statement to correct. Detective Zensen testified concerning the weapon that was recovered and was tested in regard to the bullet recovered from autopsy, but not that it was "sent in" for some type of DNA testing to the victim. (R. p. 516, lines 13-17). Her focus was rightfully on the instant case. (See also R. p. 515, lines 12-25). As the trial judge found, the separate gun Petitioner wanted to question the detective about was not submitted with the same SLED case number, could not have involved in the murder as it was a different caliber, and Petitioner failed to show any connection in investigation or personal knowledge for the request. (R. p. 521, line 8 – p. 522, line 24; p. 523, line 21 – p. 524, line 25; p. 527, line 24-p. 529, line 4). The trial judge reasonably found on these facts that Petitioner's offered

---

S.E.2d 725, 728 (Ct.App. 2014). Again, the officers relied on information received from the auto parts personnel which support probable cause. Further, the key fact is Petitioner looking for and obtaining, by whatever means, the replacement seat shortly after the murder. The date of purchase, if any, is less important than the fact of looking for and obtaining the replacement seat. If anything, Petitioner points to an incorrect fact of no consequence. Again, he is not entitled to any relief.

inquiry simply did not reflect fair impeachment. (R. p. 523, line 21-p. 524, line 16). Thus, there was neither an incorrect fact nor a basis to show bias or impartial – the general points to impeach a witness upon. *See Gillian*, 360 S.C. at 450, 602 S.E.2d at 71 ("On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.").

As to the argument there is a defense to be offered because investigators continued to investigate matters related to the victim, that does not show some fact of bias or dishonesty necessitating cross-examination on same. *See State v. Saltz*, 346 S.C. 114, 132, 551 S.E.2d 240, 250 (2001) ("Appellant sought to ask Mengedoht what she would do 'if she had to make a choice between being loyal to her friend and protecting her son.' This question did not seek to elicit a fact tending to show bias.") (emphasis in original). The testing of an unrelated gun, that could not have been the murder weapon, in a separate submission with a separate SLED number is too tenuous to constitute necessary cross-examination. The trial judge correctly found inquiry of same should not be allowed in cross-examination.

Thus, the trial judge did not abuse her discretion in limiting cross-examination on this irrelevant subject. Rehearing is not warranted.

5. Lastly, Petitioner claims the Court erred in finding the trial judge's colloquy with Petitioner about the dangers of self-representation was sufficient under *Farretta*.[5] (Petition, pp. 18-21). This Court essentially found the trial judge's advice, along with Petitioner's responses and background, was sufficient to allow waiver of the right to counsel. (See Opinion, para. 5). The record well-supports that conclusion.

---

[5] *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525 (1975).

As this Court correctly found, (Opinion, p. 3, para. 5, citing *State v. Bryant*), "it is the trial judge's responsibility to determine whether there is or is not an intelligent and competent waiver." *State v. Dixon,* 269 S.C. 107, 236 S.E.2d 419 (1977) (*citing Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019 (1938)). Further, it is well-settled that no particular set of questions must be asked. See Am.Jur. Crim.Law § 1153 ("Where advice or admonition from the court to the defendant is undertaken to establish a valid waiver by the defendant of the right to the assistance of counsel, no particular cautionary instruction or form is required to ensure the validity of the waiver.").

Here, the record reflects continuing and lengthy discussions between Judge Goodstein and Petitioner, referencing not only the right to counsel, but specifically its value. Judge Goodstein cautioned Petitioner about the need for experience and training to grasp the art of representation and to present relevant defenses. (See R. p. 7, line 11 – p. 35, line 18). In particular, the judge underscored the significant risk he ran in choosing self-representation; advised the danger was increased because of the second murder charge; and took extra effort to explain the dangers and disadvantages of self-representation in such a manner that Petitioner would understand, relating his decision to his prior work history and experience in the military. (R. p. 22, line 12- p. 23, line 15; p. 30, lines 2-13). Further, she encouraged Petitioner to file a motion for counsel if he should change his mind any time before trial. (R. p. 36, lines 16-22). In short, Judge Goodstein fully and fairly advised Petitioner on the dangers and disadvantages of self-representation. The judge more than fulfilled her responsibility to determine whether the waiver was intelligent and competent. The record well-supports this Court's finding of same.

Further, the Court apparently accepted the State's argument in the alternative, that, should the waiver process be held insufficient, the record otherwise supports understanding. (See Opinion, p. 3, para. 5, citing *State v. Cash*). The State argued as to Petitioner: 1) he was in his thirties with college education and military experience and no evidence of mental or physical ill health; 2) he had been previously involved in the trial that resulted in a mistrial and had also been involved to some extent with representing himself in his other murder charge; 3) he certainly understood he was being tried for murder and knew he faced on this first charge a sentence of thirty years to life; 4) he was represented by Mr. Loy prior to his decision to represent himself and requested Mr. Loy remain as standby counsel (and there appeared to be no difficulties evident in record between the two, with Petitioner often consulting with Mr. Loy, see for example, R. p. 231, line 23; p. 232, line 25; p. 233, line 8; p. 234, line 19); 5) he did not appear to be delaying the proceedings; 6) he not only was appointed standby counsel, but, as noted, he also consulted with standby counsel; 7) the judge advised him he would have to abide by the rules of court and he confirmed he understood; 8) he did not discuss legal or factual defenses but was advised that counsel would be charged with presenting defenses, and defense would be important in the representation; 9) the conversation was tailored specifically to him; and 10) there was no evidence of "coercion or mistreatment" prompting the waiver. (See FBOR, pp. 42-43). *See also State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App.1992) (listing such factors in reviewing record for evidence of sufficient understanding). Thus, should the Court review the record under these facts, the record well and fully supports a knowing and intelligent waiver. However, such review is not necessary in light of the trial judge's thorough advice.

In sum, the trial judge carefully reviewed the dangers and disadvantages and the advice was sufficient. There is no error. Rehearing is not warranted.

CONCLUSION

Based on the forgoing, Respondent submits Petitioner has failed to show that rehearing is warranted. The petition should be denied.

Respectfully submitted,

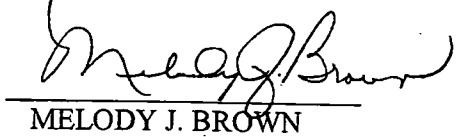
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 
MELODY J. BROWN
S.C. Bar No. 14244

Office of the Attorney General
Post office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

November 23, 2015.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Don-Survi Chisolm, Petitioner.

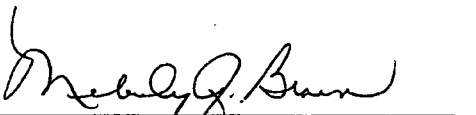
Appellate Case No. 2011-200186

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's Return to Petition for Rehearing on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellant Defender
Lara M. Caudy, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

This 23rd day of November, 2015



MELODY J. BROWN

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

The State, Respondent,

v.

Don-Survi Chisolm, Appellant.

Appellate Case No. 2011-200186

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

Stephanie P. McDonald J.

Columbia, South Carolina

cc:
Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
Melody Jane Brown, Esquire
John W. McIntosh, Esquire
Donald J. Zelenka, Esquire
David Michael Pascoe, Jr., Esquire

FILED

December 17, 2015

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT.

APPELLATE CASE NO. 2011-200186

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
140 N. Main Street, Suite 102
Summerville, SC 29483-6443
(843) 871-2640

Attorneys for Respondent

VOLUME ONE OF TWO
PAGES 1 - 500

INDEX

INDEX i

VOLUME ONE

PRE-TRIAL TRANSCRIPT (February 11, 2011) (Motion for Self-Representation) 1

PRE-TRIAL TRANSCRIPT (July 14, 2011) 40

PRE-TRIAL TRANSCRIPT (July 22, 2011) 72

MISTRIAL TRANSCRIPT (August 22-23, 2011) 86

TRIAL TRANSCRIPT (September 13-19, 2011) 132

DEFENSE MOTION TO SUPPRESS HEARING 133

TESTIMONY

MIKE GIGLIO
Direct Examination by Mr. Chisolm 142
Cross-Examination by Mr. Hilton 161
Redirect Examination by Mr. Chisolm 165

OPENING STATEMENT BY MR. HILTON 177

OPENING STATEMENT BY MR. CHISOLM 183

TESTIMONY

TONIA PLATT
Direct Examination by Mr. Austin 186

JOE BURNETTE
Direct Examination by Mr. Austin 189
Cross-Examination by Mr. Chisolm 191

JOSEPH BISTROMOWITZ
Direct Examination by Mr. Hilton 195
Cross-Examination by Mr. Chisolm 205
Continued Cross-Examination by Mr. Chisolm 216

Redirect Examination by Mr. Hilton 219
Re-cross Examination by Mr. Chsolm 221

TAMEKKA WILLIAMS
Direct Examination by Mr. Hilton 223
Cross-Examination by Mr. Chisolm 226
Continued Cross-Examination by Mr. Chisolm 235
Redirect Examination by Mr. Hilton 241
Re-cross Examination by Mr. Chisolm 243

SHAKARA ROSE
Direct Examination by Mr. Hilton 244
Cross-Examination by Mr. Chisolm 246

SHAQUANDA LASHAY WHITE
Direct Examination by Mr. Hilton 251
Cross-Examination by Mr. Chisolm 259

DAVID WHITE
Direct Examination by Mr. Hilton 267
Cross-Examination by Mr. Chisolm 302
Continued Cross-Examination by Mr. Chisolm 319
Continued Cross-Examination by Mr. Chisolm 323
Redirect Examination by Mr. Hilton 344
Re-cross Examination by Mr. Chisolm 350

PATRICE MCKNIGHT
Direct Examination by Mr. Hilton 353
Cross Examination by Mr. Chisolm 355
Redirect Examination by Mr. Hilton 356
Re-cross Examination by Mr. Chisolm 357

SUSAN JOHNSON
Direct Examination by Mr. Hilton 358
Cross Examination by Mr. Chisolm 363
Redirect Examination by Mr. Hilton 369

ERIN PRESNELL
Direct Examination by Mr. Hilton 370
Cross Examination by Mr. Chisolm 378
Redirect Examination by Mr. Hilton 380
Re-cross Examination by Mr. Chisolm 381

RICHARD JONES
Direct Examination by Mr. Hilton 391
Cross Examination by Mr. Chisolm 395

GEORGE GALLARDO
Direct Examination by Mr. Hilton 397
Cross Examination by Mr. Chisolm 405

THOMAS SIMONELLI
Direct Examination by Mr. Hilton 411
Cross Examination by Mr. Chisolm 414

CHRIS CARREIRO
Direct Examination by Mr. Hilton 416
Cross Examination by Mr. Chisolm 423

ALLISON GREER
Direct Examination by Mr. Hilton 425
Continued Direct Examination by Mr. Hilton 437
Cross Examination by Mr. Chisolm 441
Redirect Examination by Mr. Hilton 447
Re-cross Examination by Mr. Chisolm 448

JAMIE ZENSEN
Direct Examination by Mr. Hilton 450
Cross Examination by Mr. Chisolm 478

VOLUME TWO

JAMIE ZENSEN
Cross Examination by Mr. Chisolm 501
Continued Cross-Examination by Mr. Chisolm 529
Redirect Examination by Mr. Hilton 532
Re-cross Examination by Mr. Chisolm 534

MIKE GIGLIO
Direct Examination by Mr. Hilton 536
Cross Examination by Mr. Chisolm 567
Continued Cross Examination by Mr. Chisolm 593
Redirect Examination by Mr. Hilton 605
Re-cross Examination by Mr. Chisolm 607

IRA PARNELL
Direct Examination by Mr. Austin 608
Cross Examination by Mr. Chisolm 614

MOTION FOR A DIRECTED VERDICT 616

TESTIMONY

DONSURVI CHISOLM (In Camera) 617

EJUHAVNA CHISOLM
Direct Examination by Mr. Chisolm 619
Cross-Examination by Mr. Hilton 622

RENEWAL OF MOTION FOR DIRECTED VERDICT 628

STATE'S OPENING ON THE LAW 629

CLOSING ARGUMENT BY MR. CHISOLM 635

CLOSING ARGUMENT BY MR. HILTON 641

CHARGE ON THE LAW 666

VERDICT 686

SENTENCING 689

INDICTMENT 690

CERTIFICATE OF COUNSEL 692

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
County of Dorchester) 2008-GS-18-00009

State of South Carolina,
Plaintiff,
Vs.
Donsurvi Chisolm,
Defendant.

Transcript of Record

February 11, 2011
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

John Loy, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NO.
Statement by the Defendant	7
DIRECT CROSS REDIRECT RE-CROSS	
Donsurvi Chisolm	
The Court 9	
Decision by the Court	34
Certificate Page	39

E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.

-- NO EXHIBITS ENTERED --

4

THE COURT: All right. This is a -- I've got a matter that I must hear in ex-parte fashion with Mr. Chisolm, involving an attorney matter. And that means that -- that -- that I'm going to need -- but for security folks, my law clerk, of course our court reporter, I need to have the courtroom.

(Briefly off the record as people exit the courtroom.)

MR. LOY: Your Honor --

THE COURT: Yes.

MR. LOY: -- I told Mr. Bischoff that -- there are no co-defendants and there's no conflict in this case. I've told Mr. Bischoff he can stay and --

THE COURT: As a member of the Public Defender's Office, that's perfectly fine.

MR. LOY: Thank you, Your Honor.

THE COURT: If he wishes to observe, I have no problem with that at all.

All right. Now, here's what I'm going to do for our record. And if you all will assist me, I'm just going to have you just call your names out.

And we're going to start with: Ms. Salsbury is here, and Ms. Kelly, of course, my court reporter; George Taylor, part of our security team; Sean is our clerk. He's present; part of our security team Ms. Jackson; my law clerk Ryan Miller. Of course, Mr. Bischoff is -- he

5

is a public defender.

(To deputies) And gentlemen, just help me. Give me your names.

DEPUTY: Lee Taylor.

DEPUTY: Kelly Williams.

DEPUTY: John Brogan.

DEPUTY: Syd Jackson.

THE COURT: Wonderful. And Marvin is in the back -- is part of our security detail as well.

That just reflects for the record who is present in the courtroom during this ex-parte proceeding.

For purposes of our record, I am just giving the notice to everyone that these matters are done on the record, but in ex-parte fashion. The matters that we are to address are going to be attorney/client privileged information. You are not at liberty to discuss these matters.

These matters are, again, attorney/client privileged. This part of the record will be sealed for the protection of Mr. Chisolm and his attorney/client privileged information. You are not at liberty to discuss this matter. I am ordering you not to discuss this matter unless you have been ordered to discuss them by -- by a judge, by a circuit court judge.

Is there any questions from anyone about that?

6

(No audible response.)

THE COURT: Very well. You are in here for security reasons or associated with your duties to the circuit court. Otherwise these matters are not to be discussed by you, because you are here in your official capacity and it is imperative that Mr. Chisolm's attorney/client privilege be protected.

All right. Yes, sir, Mr. Loy.

MR. LOY: Thank you, Your Honor. We're here on my request on Mr. Chisolm's behalf. Mr. Chisolm's currently housed in the Berkeley County Jail, and he had various issues he wanted brought to the Court's attention; and indicated he would like to address Your Honor directly on his own behalf.

I will make the Court aware that when he indicated to me the nature of some of his request, or his request today as I understand it to be, that I did tell him I didn't think it was necessary he go through the disadvantage -- as he is at this point -- go through the formalities of filing a formal motion on his ground for relief that he's requested, etc.; that I thought you would hear from him and hear his motion today even absent having filed some formal motion notice on the Court or anything else.

THE COURT: Okay.

MR. LOY: With that, are you prepared to hear from Mr.

7

Chisolm?

THE COURT: I am prepared to hear from Mr. Chisolm.

(To the defendant) Hi, Mr. Chisolm.

THE DEFENDANT: How you doing today, Your Honor.

THE COURT: Mr. Chisolm, what is your first name?

THE DEFENDANT: My name is Donsurvi; D --

THE COURT: Thank you.

THE DEFENDANT: D-o-n-s-u-r-v-I. Last name is Chisolm; C-h-i-s-o-l-m.

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

THE DEFENDANT: Your Honor, I would like to assert my constitutional right to self-representation. I'm aware of the disadvantages and dangers of that. I am of sound mind. I'm very -- I'm -- I know clearly the decision that I am making.

I don't want to waste the Court's time arguing the conflicts and issues that me and Mr. Loy have together. I would like to proceed pro se as of this day February 11, 2011.

THE COURT: All right. In other words, you don't want a lawyer. You want to represent yourself.

THE DEFENDANT: Yes, Your Honor.

THE COURT: I understand. And I'm going to have to examine you about that, and you know that, right?

THE DEFENDANT: Yes, Your Honor.

8

THE COURT: And you -- you -- you understand that that's required, because I gotta make a decision, right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Very well. Thank you. If you want to be seated. I want you to be comfortable. You need some water?

THE DEFENDANT: No ---

THE COURT: Because we gotta talk a little bit. Well, you just let us know if you want something to drink now, okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Because you're going to have to talk a bit, because I'm going to be asking you some questions.

Now, let me ask you this question: Do you solemnly swear or -- or affirm that the testimony that you will give will be the truth and the whole truth?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Because I've gotta do an examination, I'm going to try to be as thorough as I can just to be sure that you and I are clear with one another that that's really what you want to do, okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Great. And -- and if you have any questions about what I'm asking you or if you don't understand my question, you let me know, okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Very well.

DIRECT EXAMINATION BY THE COURT:

Q Now, tell me what you're charged with.

A Murder.

Q In -- in Dorchester County.

A Yes, Your Honor.

Q But you're in Berkeley County.

A Yes, Your Honor.

Q Okay. All right. Do you have a lawyer in Berkeley County?

A I'm representing myself in Berkeley County, Your Honor.

Q Okay. Let me ask you -- because I don't know, so I ask you some -- some of this information I'm just asking just to begin to get familiar with your case, because I know absolutely nothing about your case, Mr. Chisolm, other than I signed an order to transport. And I think that's when I learned some information that you were in Berkeley County and needed to come over here, okay?

A Yes, Your Honor.

Q Is your case scheduled for trial at this time so far as you know?

A No, Your Honor.

Q Okay. I -- I don't know it to be scheduled at this

time either. I'll just share that with you. I certainly don't know that.

And the reason that I say that is I have some notes. And one of my notes is that the Court is supposed to determine whether the request to represent oneself may hinder the administration of justice or whether it's -- it's interposed -- a request to represent oneself is interposed to gain some sort of delay. Well, it couldn't be, because your case isn't -- isn't scheduled, right?

A Correct, Your Honor.

Q Okay. And interestingly enough, the first thing that I would -- of course, would -- that I have to determine is that you are informed of the dangers of self-representation. That's what you just said.

A Yes, Your Honor.

Q You said, "Judge, I'm aware -- I -- I'm aware that it's dangerous for me to be representing myself." And you went right to that, which means that you know that's one of the things that I'm going to be real concerned about, is that you are aware that there is a danger of self-representation, and you went to that just a minute ago, didn't you?

A Yes, Your Honor.

Q And that's the reason that you did that.

A Yes, Your Honor.

Q Okay. And you said "disadvantage," too: "I know I'm disadvantaging myself by self-representing myself. And I'm aware of the disadvantage and I'm aware of the dangers of self-representation." Both of those items, you went right there, didn't you?

A Yes, Your Honor.

Q And the reason that you did that is because you know that those are -- those are both items that I'm supposed to be concerned about.

A Yes, Your Honor.

Q Okay. All right. And I gotta ask -- ask some background -- (sneezes) excuse me -- information you. Mr. Chisolm, tell me how old you are.

A 31, Your Honor.

Q Okay. And where -- where were you born?

A New Orleans, Louisiana.

Q Okay. And -- and where is your home now?

A Was Goose Creek, South Carolina.

Q It was? Okay. When did you move to Goose Creek?

A 2009, Your Honor.

Q Okay. Are you married?

A Yes, Your Honor.

Q Got kids?

A Four, Your Honor.

Q Okay. Tell me how long you've been locked up.

A Ten months, Your Honor.
Q Before then, were you working?
A Yes, Your Honor.
Q Where?
A Sonic Drive-in.
Q Okay. Which -- which Sonic?
A I worked at the Highway 78 location and I was preparing to take over as the GM on the Highway 41 Mount Pleasant location.
Q Highway -- where's the one on Highway 78?
A Right across the street from Charleston Southern, Your Honor.
Q Oh, okay. Okay. I know where you're talking about. All right.
And you were going to take over which one now?
A The one on Highway 41, Mount Pleasant.
Q Oh, okay.
A Yes.
Q And how far did you go in school?
A One year of college.
Q Okay.
A And more college credits when I was in the military, Your Honor.
Q You were in the military, too?
A Yes, Your Honor.

Q Okay. So -- all right. You graduated from high school ---

A I ---

Q --- or got your GED.

A Yes, Your Honor.

Q Okay.

A And then I immediately went to college for nursing. I decided I didn't want to be a nurse.

Q Okay.

A I went into the military. Got a little more college credits in the military. Did 10 months in Afghanistan, came home.

Q All right. Well, which branch of the military did you go into?

A The Army, Your Honor.

Q You went into -- when? Tell me when you're talking.

A 2003.

Q All right. 2003 you go into the Army.

A Yes, Your Honor.

Q Okay. And -- and you're trained in what -- in what area?

A Fuel and ammo, Your Honor.

Q Say that one more time.

A Fuel and ammo, Your Honor. I ---

Q Fuel and ammo --

A Yes. I ---

Q Ordinates. Isn't that called "ordinates"?

A Yes.

Q Maybe it used to be called that. I'm -- I'm married to an old Viet Nam vet, you know what I'm saying? I know all the old lingo. I don't know none of the new lingo, but I know the old lingo.

All right. So you were in fuel and ammo, right?

A Yes, Your Honor. I was working with the aviation unit ---

Q Yeah.

A --- and separately I worked the special forces unit --

Q Yes.

A -- for the last six months of deployment.

Q I got it. And so then you deploy out of --

A Fort Drum, New York, Your Honor.

Q Okay. And then you go to Afghanistan.

A Yes, Your Honor.

Q For 10 months you're in Afghanistan.

A Yes, Your Honor.

Q All right. And what is your job there?

A As I said, it's fueling helicopters, loading helicopters with -- with the special ammo that they need. And the last six months I just did things with special forces that's --

Q That you can't talk about.
A Yeah.
Q Okay. And -- and that's in Afghanistan. Then you return from Afghanistan after 10 months of deployment, and where do you go then?
A Back here, Your Honor.
Q To Goose Creek?
A No, Your Honor, I'm sorry. To Summerville, South Carolina.
Q To Summerville.
A Yes.
Q Okay. And -- and at that point, are you -- are you discharged from -- from the military?
A Yes, Your Honor. I received a medical discharge from the military. I injured myself in -- well, I was injured in Afghanistan. I received a -- general under honorable conditions discharge from the military.
Q Say that one more time: A general --
A Under honorable conditions --
Q Yes.
A -- discharge from the military. I was injured and I'm still currently getting paid by the military.
Q Tell me what -- in general terms -- the nature of the injury.
A Shoulder.

Q Injured your shoulder.
A Yes, Your Honor.
Q Came back. And where were you treated? Were you treated --
A I was treated in Afghanistan.
Q Uh-huh.
A I was treated in Fort Drum, and I received limited treatment here. I'm actually on the VA list to have surgery on my shoulder. The VA takes forever.
Q I understand. All right. So then you -- and so then you were discharged and you come back to Summerville.
A Yes.
Q All right. But -- but in the whole process of getting ready to deploy, you have additional college credits.
A Yes.
Q Okay. And additional educational credits.
A Yes.
Q Yes. So you come back here, you discharge out of the military, and then, where -- then what do you do?
A Work on heavy machinery.
Q Okay.
A Trucks and heavy machinery.
Q Yes.
A I learned to drive pretty much anything with wheels while I was in the Army.

Q Yeah. I bet.
A I worked on any type of heavy machinery that, you know -- semi-trucks; Charleston Portable Storage, the pods, you know, those trucks.
Q Yep.
A Cranes, factories.
Q And you're working for --
A I worked at Charleston Portable Storage, and Furniture Rentals Incorporated. Charleston Portable Storage and Furniture Rentals were both located on Ashley-Phosphate Road. Well, Furniture Rentals actually moved. I'm not sure of the location they moved to. And Charleston Portable Storage is on Ashley-Phosphate Road off of North Railroad Drive, across from the cemetery on Ashley-Phosphate Road ---
Q I know where you're talking about. I got you. All right. And so how long did you work for them?
A One year a piece.
Q Each of those ---
A Yes.
Q --- for a year. And basically drove whatever they needed to be -- and worked on their equipment and do whatever they needed to be done.
A Yes, Your Honor.
Q Okay. And -- and now, tell me at this point, after

those two years, tell me what year we're in.

A Let's see, 2000 -- I came back in 2005, 2006, will be 2007. And the last job that I had in 2007 after those would have been Berkeley Steel Tech, where I operated cranes. That's in Huger, South Carolina, right next to NuCor.

Q You were -- you were on the Port?

A No. It's on -- it's -- is that on -- no. It's not on the Port, not to my knowledge.

Q But you were operating cranes for --

A Berkeley Steel Tech.

Q Okay.

A Berkeley Steel Technologies.

Q Yes.

A It's -- it's a smaller company. It's right next to NuCor and they -- they shipped and -- they cut and ship all the steel coils for NuCor before it's ---

Q Okay.

A --- they melt it down.

Q Okay. And you were operating a crane. Were you loading trucks or were you loading ships? What are you --

A Loading trucks, trailer cars for trains, things ---

Q Got it.

A --- like that.

Q Got it.

A Pretty much I controlled those -- anywhere from 15,000 to 60,000 pounds of metal being moved over everyone inside a warehouse at any given time. So I was trusted with a lot of people's lives.

Q Got it. And so you work at that job for ...

A Only a couple of months actually. The -- the time ---

Q Okay.

A --- frame that they had there, I worked 12-hour shifts, six to seven days a week; and it was an hour there and an hour back. I felt it was unsafe for me to keep driving back and forth, you know. After a 12-hour shift, I get sleepy at three o'clock in the morning, and come up from Huger and you know, there's no other traffic to keep me awake.

Q Uh-huh. Uh-huh.

A I could possibly wreck, and my wife didn't like that -- like that idea. I didn't like that idea. So I left it.

Q After a couple of months. All right. Then you went to Sonic.

A No.

Q No?

A I actually got arrested after that for murder in Dorchester County.

Q Okay.

A I spent 10 months inside Dorchester County Jail.

Q Okay.

A Bonded out.

Q Bonded out. Right.

A And then, immediately after bonding out, I went and applied -- well, the only place I could apply for a job at was McDonald's at the time, because the murder charge kept coming up on my background check and I couldn't work in a warehouse.

So I went to -- I went to McDonald's, applied for a job, told them I wanted to be a manager because I had a past history of being a manager when I was 19 at Hardee's, that I was assistant manager in Atlanta -- well, in Marietta, Georgia.

Q Yeah.

A And based off of that, they gave me a chance. Allowed me to -- gave me a start being -- as a shift manager. Someone found out about the murder charge in Dorchester County. So you know, things started getting a little rough. I transferred to North Charleston to another McDonald's. Someone found out about it there as well, so things started getting a little rough.

And I applied with Buck Management. They did a background check. The murder charge didn't come up on the background check. And I just worked to the best of my abilities, until they decided they were going to give me

the GM position at the Sonic on 41.

Q Okay.

A And then I got charged with murder in Berkeley County.

Q Okay. And then -- and so that's -- hence, you've been in Berkeley County.

A Yes.

Q Got it. Now -- and that gets -- and then you've been in Berkeley County the rest -- you've been -- you have not bonded out since that time.

A No.

Q Okay. Now, so your work history is -- is exceptional, your educational background is exceptional. Yes.

A Yes, Your Honor.

Q Any treatment for post-traumatic stress syndrome, any mental health treatment?

A No.

Q Any treatment for alcohol or drug abuse?

A No, Your Honor.

Q Okay. I got to go back to my cheat sheet.

A Yes, Your Honor.

(Brief pause.)

Q You understand that you have a constitutional right to counsel.

A Yes, Your Honor.

Q You understand there's a benefit to counsel.

A Yes, Your Honor.
Q You understand that -- well, you understand that murder carries from 30 years to life in prison.
A Yes, Your Honor.
Q All right. And life without the possibility of parole.
A Yes, Your Honor.
Q Meaning you go out in a box.
A Yes, Your Honor.
Q You go out horizontally.
A Yes, Your Honor.
Q Okay. And you understand that the reason -- the reason -- the reason that there's a benefit of counsel is because if you took me today and said we're going to put you on this crane out in Huger, and you're going to take this steel between 15,000 and 60,000 pounds of steel with this crane, and we want you to go on up there and climb up and operate this steel, you -- you're reasonably -- Goodstein, you're reasonable talented, go up there and get in and operate it.
A I would go nowhere near you. Yes.
Q Thank you.
A I understand that.
Q You know why? Now, whose -- I don't know whose -- I don't know whose life would be at greater risk, mine or

yours. But just as you said, there's a number of -- you said there were a number of lives that were at risk and I was protecting all these people, right? Remember you said that?

A Yes.

Q I -- I would be very dangerous.

A Yes.

Q Myself and you. Yeah. Don't go near Huger that day, right?

A No.

Q No. Okay. That's the reason. I don't know what I'm doing, you know. And -- and -- and -- and it would very dangerous. It's the exact same thing. It is the exact same thing. Practice of law is an art.

A Yes.

Q People go to school and they train. And it takes experience, and there's a language to it. There's an experience to it.

Mr. Loy represents you here. You know, whether you know it or not, he is an extraordinary lawyer.

A Yes, he is.

Q Yes. He really is. He's incredibly -- this is almost painful. He's incredibly bright and incredibly capable. You know, he knows what he's doing. He knows -- he and I -- you know, we've known each other. We've been friends

for a very long time, and he is as fine a lawyer as there is for sure in this state, probably this country. You understand that?

A Yes, Your Honor.

Q Okay. So you know you won the lottery. I mean, you know, he's not only -- you're not only entitled to a lawyer, it just so happens that the lawyer that you happen to have drawn, if you will, happens to -- to be a superb lawyer. Or any -- use anybody skilled, doesn't matter. Use them. He's a superb lawyer. You know that.

A Yes.

Q Okay.

A I'm very aware of that.

Q Very well. And you're like, excuse me, I'm going to toss that away.

A Yes, Your Honor.

Q You understand that.

A Yes.

Q Makes no sense to me.

A It --

Q It worries me. I'll be up walking tomorrow morning, three o'clock, you're responsible for me having no sleep. I'm worried about you.

A I apologize for that.

Q Okay. But you understand there's dangerousness --

there's dangerousness associated with that.

A Yes, Your Honor.

Q All right. Being the captain of your own ship -- there's a lot to be said for being the captain of your own ship, being -- being in charge of what happens in your own universe, except when you're amongst lots of rocks and you don't know what you -- and you don't know how to be captain of your ship. Okay.

A Okay.

Q All right. And you happen to have Captain Ahab at the helm. Okay. It just happens that you got Ahab. Am I making sense?

A Yes.

Q Okay. So I'm -- and not only am I concerned about you, I'm real concerned about you because you got who you got.

A Yes.

Q Okay. And are you hearing me?

A Yes.

Q I mean, I want you to hear what I'm saying is: What are you doing? You know, there's some lawyers, uh-huh. This lawyer, I don't know what you're doing, and I want you to -- I just want you to hear that. Wherever we go from this point, we're -- honestly, wherever we go from this point, I do want you to know that -- that you really

did win the lottery.

A I understand.

Q Do you hear what I'm saying?

A I understand, Your Honor.

Q Okay.

A I apologize ---

Q No, no, no. Don't apologize. That's not what we're about. I just want you to know that, you know, sometimes you luck out, sometimes you don't luck out in life. Do you know what I'm saying?

A Yes, Your Honor.

Q Yeah. This time you lucked out. That -- I just -- it's important that you at least know that, you at least got somebody that -- we were real lucky when we got -- I mean, I had -- actually had a conversation with one of the justices of our Supreme Court as we were talking about the implementation of the public defender system.

And we were talking about it and -- and I -- and I was real -- I was bragging because I could not believe that we had had -- first of all, we've got Mark Leinendecker, who I have all the confidence in the world in. And I was real excited that we got him.

But when I -- and -- and -- and -- but when we got Mr. Loy, and -- and again, I'm not quite sure why, but when we got him in the Public Defender's Office, it was -- it was

a tremendous coup, and I was real excited about that. And I was sort of bragging about it to one of the justices, because you know, it was just -- it was -- we didn't know much about it as -- as -- as our public defender system came up and I was just really bragging about ours.

I said we really -- we really got something special. And I said, "We got this guy Loy that is really going to take our Solicitor's Office to task, and he's going to make them step up, because he's just that good." And I was real proud of that so ...

Again, this is almost painful. But -- but you really did win the lottery and it's important that you know.

You're entitled to represent yourself. Our constitution says you're -- it's important that you know that. And we're going through that process. But I gotta -- you know, and all my concern, my heart-felt concern for you, I gotta tell you, you have -- you don't have just any lawyer. You got -- really have a great lawyer, and it's important that you know that. And -- and I think you do. I hope you've heard that. I hope you ---

A Yes.

Q --- picked that up, because you -- you really do.

Now, you know, it's interesting, one of the things I have down here: possible defenses to the charge. You know, self-defense, of course, is important, that -- that

you know, I -- and -- and we're not going to talk about your defenses. We're just not going to do that. I'm not going to let you go into your factual basis. We're not going to do that. I'm not going to let you do that. Okay.

A (No audible response.)

Q But there's a note down here that says "possible defenses to the charge." I don't know -- I don't know about your investigation. I don't know about that, but you know, there -- there are any number of defenses that can be/must be developed. And that's important. And you've got to have somebody that has the ability and the capacity to -- to develop any number of areas.

There's all kind of expertise that's available in the world. And -- and you've got to have somebody who has the capacity to do that, which is -- which is another reason why it's important and -- and why you put yourself in danger by not having a lawyer represent you.

And -- and not -- it -- it really -- it's twofold: Number one, it has to do with the development of defenses at trial, and then any mitigation in the event -- in the unhappy event, shall we say, of a conviction. Okay. You with me on that?

A Yes, Your Honor.

Q Okay. And -- and there's all -- and -- and there's

all the overlay. And again, I don't want to get into the facts since I don't know anything about the facts. And I'm a little bit in -- in shark=infested waters myself here, because I don't know -- I don't know the relationship between the Berkeley County allegations and the Dorchester County allegations. But I can tell you that they -- that that having two allegations and -- and two murders in two counties is not helpful. How bout that?

A Yes.

Q And so, I -- and that's all I know. I know no more than that, but I know that's not good. And -- and I know that the overlay of that's not good.

So it -- it's -- so as troublesome and as dangerous and as much as you put yourself at risk in representing yourself with regards to one murder charge, having two of them has got to make that even more risky and even more problematic exponentially. It's got to. And I don't need to know any -- any more. But I'm even more troubled. Do -- do you hear what I'm saying?

A Yes, Your Honor.

Q Okay. All right. And put you even more at disadvantage, yes?

A In a sense, yes.

Q Yes. Yes.

A Yes.

Q Yes. Running the tactics of all that, yes, right. I mean, you know exactly what I'm talking about because you just came back from Afghanistan. You have -- you participated in the planning and the execution of tactics, where tactics, you know, in the world mean everything. You know, how you do; what you do, when you do, you know. So you know that first -- up close and personal, as they say, given what your life has been in the last 10 years.

A Yes, Your Honor.

Q Yes. So am I getting anywhere with changing your mind?

A No, Your Honor.

Q I was afraid of that. I really was concerned about that. Okay. You know I want to change your mind, right?

A Yes, Your Honor.

Q Okay. You know that I really don't want you to represent yourself.

A Very aware of that, Your Honor.

Q Okay. And because I really know -- I really believe that you are at risk.

A Yes, Your Honor.

Q Okay. And I really do think that it's not wise for you to do that. You know I believe that with my --

A Yes, Your Honor.

Q -- heart of hearts.
A Yes.
Q And I don't want you to do that, because I know you're at risk. And I think you understand that, too.
A Yes, Your Honor.
Q Okay. Oh. And so let me ask you this question: Do you know that you can change your mind?
A Yes, Your Honor.
Q At any time.
A Yes, Your Honor.
Q Okay. And you certainly can have counsel --

THE COURT: Now, Mr. Loy, where are we on stand-by counsel? You can have stand-by counsel, right?

MR. LOY: In the past you can, because I have been stand-by counsel ---

THE COURT: That's what I thought.

MR. LOY: --- Your Honor.

THE COURT: What is the -- what is the hybrid that you can't have? Isn't that right? One of them we're -- one of them we're not happy with, and one of them -- stand-by we're okay; hybrid we're less sure about.

MR. LOY: I -- I --

THE COURT: You don't know. We won't go there.

THE DEFENDANT: I actually have the case law, but I -- I forgot to bring it ---

32

THE COURT: Well, how are we on hybrid?

THE DEFENDANT: I -- I have the papers downstairs. I forgot to bring them up here.

THE COURT: That's okay. That is okay.

Here's what I -- here's what I want to tell you. Here's what I would like you to know: What I would like you to know is that I -- I would certainly want Mr. Loy to continue as stand-by counsel, whatever that means. If you need him, he's there.

But here's what I absolutely want you to know --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- is you know that you still have to comply with the rules.

THE DEFENDANT: Yes, Your Honor.

THE COURT: All of the rules.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Rules of evidence, the court rules.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And -- and if you -- and you do know that you can change your mind.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Yes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And it's okay if you change your mind.

33

THE DEFENDANT: Yes, Your Honor.

THE COURT: And it's a good thing if you change your mind.

THE DEFENDANT: It can ---

THE COURT: Yes?

THE DEFENDANT: --- be. Yes, Your Honor.

THE COURT: Okay. And I would -- I would celebrate a mind-changing event for you, right? You know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Okay. Because -- and again, only because I worry about you, and I know that you're putting your freedom at risk; and I know that -- and -- and I worry about you, right? You know that.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Very well. Well, here's my problem with -- with this whole thing, Mr. Chisolm: You're obviously very bright. You're obviously highly educated. Your work background is superior. I mean, there's -- as I go through my notes and I go through the case law, unfortunately, I -- I mean, I really -- you know, I would really like to say, "I'm sorry, Mr. Chisolm, but you can't represent yourself." And -- and I'm looking for a way to say, "Mr. Chisolm, I -- you know, you can't represent yourself, only because I worry about you." You know that. Because I know what kind of risk you put yourself in.

34

But our constitution gives you that right. You know that, right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And -- and I must tell you here's what I am finding: You are a 31-year-old gentleman; you're from New Orleans. You've moved to our area. You -- you know, but recently you lived in Goose Creek before these events that find you in -- pre-trial detained in Berkeley County.

You're married with four children. You were working at Sonic. You were on board to become a general manager at the Sonic on 41.

THE DEFENDANT: Yes, ma'am.

THE COURT: And that you were in Afghanistan in 19 -- 2007.

THE DEFENDANT: 2004 to 2005, Your Honor.

THE COURT: 2004 to 2005. And then you were honorably discharged -- you were discharged honorably, but with medical conditions to your shoulder. And you're awaiting some additional treatment to your shoulder at the VA.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And -- and you have a -- certainly a good work history.

You are aware of your charges. You're aware of the possible punishments. You -- you began this hearing basically by saying, "Hi, Judge Goodstein. Yes, I am very

35

aware of the risk that I'm placing myself in and the dangers of self-representation."

And I'm -- and I must tell you I'm -- I'm convinced that you are aware of it. I -- I think that your waiver is being made understanding what -- what you're doing.

You know, I wouldn't say it's not been intelligently made, but you're an intelligent man and you're making the decision. And I think you're doing that with your eyes open.

I don't think I understand the "why" part of it. I think I don't like it. But that -- the judge's pleasure with it is -- doesn't get to be factored in. I don't get a vote. You do. I don't.

I think you're knowing -- you know what you're doing. You're intelligent. There isn't any evidence of any kind of mental illness or any sort of incompetency at all on your part. I -- I can find no reason to disallow you to -- to self-represent yourself.

I don't want you to do it. I think you know that, and I think you know why. I want you to change your mind. I want to communicate to you in every way that I know how that you can change your mind. Please change your mind.

But I can find absolutely no -- no basis in the law based on my examination of you that would -- that would dictate that you are a person who is someone who cannot

36

represent themselves.

And you know, if you had chosen to -- to probably to go to law school instead of going to nursing school, you probably could have done that, too, because you're obviously very bright and very capable and you're aware of what you're doing.

Do you have any questions of me with regards to this part of the process?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Now, let me ask you this question -- or -- or you know, you're in Berkeley County.

THE DEFENDANT: Yes.

THE COURT: If you choose to -- you know, you're going to have to file things, right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And it suits me if the first thing you want to choose to do is to file a motion to appoint counsel, right? Yeah?

THE DEFENDANT: No.

THE COURT: Okay. Well, don't hesitate to do that if you change your mind.

THE DEFENDANT: Yes ---

THE COURT: I'm going to ask Mr. Loy to -- to draft for me an order, but I'm going ask him to run that by you first. Okay?

37

THE DEFENDANT: Yes, Your Honor.

THE COURT: So when you get that document from him, just know that -- that I just need hands to help me. So when -- when he shows it to you, you will approve it, then I will sign it, okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Fair enough?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Any other questions?

THE DEFENDANT: Just wanted to know -- but you leaving him on as stand-by counsel, and who will be in charge of my transportation once I'm in Berkeley County if I need to come back?

THE COURT: Oh. That is so smart on your behalf. What you'll need to do is that you will need to send an order for trans -- well, there really a couple of places.

If there's a pending motion and you need an order to be transported, I think it can go -- Mr. -- and feel free to chime in. I think either it can go to the solicitor or can -- can give it to the judge and go to chief administrative judge, who is Judge Dickson right now. Or can go to whoever the presiding judge is. If it's a two-week term, it can come to me. If -- if there's a motion here or something else, and -- and it can go to whoever's here, like week one for week two.

38

THE DEFENDANT: Yes.

THE COURT: Does that make sense? In other words, the difficulty simply is is that the order arrive at the -- for the judge to sign it and get it back to Berkeley County so they got time to react to it.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Does that make sense what I'm saying?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Okay.

THE DEFENDANT: All right.

THE COURT: All right.

THE DEFENDANT: Yes.

THE COURT: All right. Anything further you can think of, Mr. Loy?

MR. LOY: No, Your Honor. Thank you.

THE COURT: Okay. Great. All right. Be well.

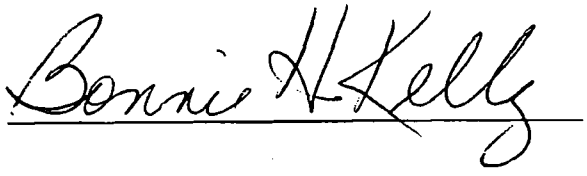
-- END OF TRANSCRIPT RECORD --

39

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court, for Dorchester County, South Carolina, on the 11th day of February, 2011.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 12, 2013

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
County of Dorchester) 2008-GS-18-00009

State of South Carolina)
)
Plaintiff,)
)
Vs.) Transcript of Record
)
Don-Survi Chisolm,)
)
Defendant.)
)
)

July 14, 2011
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
Attorney for the Plaintiff

Don-Survi Chisolm, Pro se Defendant

John Loy, Esquire
Stand-by Cou

Bonnie H. Kelly, CVR
Circuit Court Reporter

is that correct?

MR. CHISOLM: Yes, sir.

MR. HILTON: And from there he may have had another one before John Loy.

MR. CHISOLM: No, sir.

MR. HILTON: Just from Marva Hardy-Thomas to John Loy.

THE COURT: Okay.

MR. HILTON: Now he's proceeding pro se. I'm not sure what discovery he has, where the discovery has; because likewise, it's gone through several prosecutors ---

THE COURT: Sure.

MR. HILTON: --- to get to him. And so, I -- I have brought my stuff here in the courtroom. Mr. Chisolm, through correspondence back and forth to me, has indicated that he does lack a few of the video tapes. And so I'm going to try and figure out which ones of those he's missing.

And ultimately, I think we're going to make another copy of everything --

THE COURT: Uh-huh.

MR. HILTON: -- and just give that to Mr. Chisolm.

THE COURT: Uh-huh.

MR. HILTON: I hate to burden him with all of that documentation again, but that's the safest way that I know of to make sure that he has everything that I am working

with. There's no intention of the State to hide anything from him or to not disclose anything.

So, you know, my stuff is here today, and Mr. Chisolm is -- is more than -- is more than -- I'm drawing a blank here. He's welcome to look in the -- look in my boxes here and take a look at what I've got, in addition to me making him a copy of all this stuff.

I know that there's some photographs and so forth from a CD that I have. And I don't know what the accommodations are at the jail. As with the VHS tapes, I can't -- I can't print out a video. I can print out the pictures, and so I can -- I can print out those pictures. So while they're on a CD in -- in my stuff, we'll print those out for Mr. Chisolm, and -- and I think that will give him better access over at the jail to be able to literally flip through the pictures.

And so however the Court thinks I should proceed as far as the discovery, I mean, it's here; if he wants to look through it, he has any questions about it, we can answer those on the record.

THE COURT: Okay. Well, let me ask -- let me just ask Mr. Chisolm, and then -- and then I have some additional -- just in terms of the -- of the Court's needs.

All right. Now, let's talk about he discovery. I -- I like very much that everything that the Solicitor has to

this point is going to be copied anew and provided to you. The most -- one of -- one of the very important things that has to happen is that there has -- you gotta get everything.

MR. CHISOLM: Yes.

THE COURT: We gotta be sure you get everything.

MR. CHISOLM: Yes, Your Honor.

THE COURT: In fact, Mr. Hilton, when you -- when you provide what you provide to Mr. Chisolm, I want you to -- to do a copy of -- you know, just do a listing of all the items. And my -- my preference would have those scanned to a disc, but I certainly want some accounting of the information that has gone to Mr. Chisolm. I want Mr. Chisolm to have that, too.

And then I want that to be filed in the file -- in the Court's file, so that there will be -- so that not only will you have the information, Mr. Chisolm have the information, but that there will be an accounting of that information on file with the Court.

But I want you to give Mr. Chisolm a listing of the -- those documentation, because if something sticks together and it doesn't copy and yet it shows up on a sheet, Mr. Chisolm will have the benefit of that sheet. In other words, it's like, if you will, another accounting of what you have already received to be sure that you got

everything, if that makes sense.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Now, talk to me about the photos and the disc. Do you want -- I -- I think you -- I think you -- you ought to have the photos printed. But do you want the disc, too?

MR. CHISOLM: I prefer it on the disc file, Your Honor, because Berkeley County gave me it on a disc file, and they actually let me watch it on the computer.

THE COURT: Okay.

MR. CHISOLM: So I can see the clearer image. It -- it's ---

THE COURT: Okay.

MR. CHISOLM: --- the clarity. Because --

THE COURT: Do you want both, or do you just want the disc?

MR. CHISOLM: I -- I prefer both actually.

THE COURT: You got it.

MR. CHISOLM: Yes.

THE COURT: Very well. Done.

MR. CHISOLM: Thank you.

THE COURT: All right. Yep.

MR. CHISOLM: Thank you.

THE COURT: Now, the VH -- the VHS tapes, now, Mr. Hilton, are you gonna reprint all the VHS tapes?

MR. HILTON: Well, that's the thing. I mean, there's so many of them that he's got.

THE COURT: Some of them.

MR. CHISOLM: I have these (indicates.)

THE COURT: Oh, great. You've got -- oh, you have a list. Oh, great.

MR. HILTON: If he's got a list, which he does appear to have --

THE COURT: Now, how are they listed so I understand: by date or by ---

MR. HILTON: The name of the interviewee and the date that the interview was conducted.

THE COURT: Okay.

MR. HILTON: And they're listed on the video, and Mr. Chisolm can take a look at that. The one I've pulled out is from David White. It says "First, 9/16/07." And -- and that's listed as one of the ones he has.

It looks pretty clear that we'll be able to distinguish which ones he has and ---

THE COURT: Okay.

MR. CHISOLM: And all of these I -- I had at Dorchester County, these will be picked up when -- when I go back, these are -- I mean, not Dorchester, Berkeley County, I'm sorry.

THE COURT: I know. Yeah.

MR. CHISOLM: Yeah. All these are already at -- those are in a box waiting for me ---

THE COURT: Yeah.

MR. CHISOLM: So anything that's missing is all -- all I'm going to need.

THE COURT: And -- and exactly. But be mindful, if something has -- even though you have a list, because you have had them, if something has happened to them in Berkeley County, don't worry about that; don't sweat that. You let Mr. Hilton know, and he will recopy it.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Do not put yourself under the additional stress of trying to find what was in Berkeley; you know what I'm saying?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Something happened to it, let it go. You know, Mr. Hilton will get you another one.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. And something we can't -- you know, if where -- it cannot be duplicated, then that's a problem. We gotta go find it in Berkeley. But you know, that -- that's too easy to duplicate, you know what I'm saying?

MR. CHISOLM: Yes, Your Honor.

THE COURT: So rather than be -- you know, be worried about that, just come on, get what you got, and just let Mr. Hilton know.

Now -- all right. So one of the things I'm concerned about is if you have a listing of those. There may be folks with more than one interview. So what I'd like y'all to do is to sort of if y'all can just -- at least today, based on one sheet, just if y'all can check -- you know, check off in some form or fashion what you have. And -- and -- and then I'd like to file that with the court. I want -- I just don't want there to be any question about -- about whether you have received everything.

I don't -- I don't want get down to trial, and all of a sudden, there's something and you haven't seen it. That's just not where -- where -- where I want -- where I want anybody to be.

MR. CHISOLM: Yes, Your Honor.

THE COURT: So are you gonna pull those now?

MR. HILTON: I just ---

THE COURT: Oh, that's great.

MR. HILTON: I just going through this stuff ---

THE COURT: Oh, that's great.

MR. HILTON: --- I'm just gonna compare ---

THE COURT: I think that's great.

MR. HILTON: --- it to this list.

THE COURT: And then we can just count what's in the box.

MR. CHISOLM: Yes, Your Honor.

THE COURT: You can look at that, and you know, you can just --

MR. CHISOLM: I have one issue I'd like to bring up when I have the chance.

THE COURT: You bet.

MR. CHISOLM: I've been trying to issue subpoenas.

THE COURT: Yeah.

MR. CHISOLM: And I've been having difficulty getting the Clerk of Court to sign and issue the subpoenas for me. Can I possibly be granted an order, you know, to let the Clerk of Court know that I'm -- that I have subpoena power? Because if I need to subpoena witnesses, it's going to be very difficult for me to subpoena them to trial if I can't get ---

THE COURT: Yeah.

MR. CHISOLM: --- the subpoenas issued.

THE COURT: Absolutely.

MR. CHISOLM: I -- I've been ---

THE COURT: Of course ---

MR. CHISOLM: --- trying for a while.

THE COURT: And so what you are concerned about is the subpoenas for trial? Your trial subpoenas?

MR. CHISOLM: Yes.

THE COURT: Tell me ---

MR. CHISOLM: I initially tried to issue a subpoena to the -- to get someone to produce evidence for me. And it never got signed. I -- I've -- I've written correspondence to the Clerk of Court. I asked a couple of times, you know, is there -- am I filling out something wrong? Am I doing this the wrong way? Could you please instruct me on, you know, the proper ---

THE COURT: Sure.

MR. CHISOLM: --- procedure if I'm doing it wrong?

THE COURT: Sure.

MR. CHISOLM: I never received a response. So I don't -- I don't know what I was doing wrong.

THE COURT: I -- I understand.

MR. CHISOLM: But I want to make sure that when it comes time, that my subpoenas actually get issued.

THE COURT: Okay.

MR. CHISOLM: And then I can make sure that my witnesses, you know, need be come.

THE COURT: Yeah. Absolutely. I'm just trying -- I'm just trying to think -- of course, you're going to have your -- of course you are going to have your subpoenas.

Let me ask you this question: And I'm not -- I'm -- I'm going to say something, but I want you to understand I am not -- I'm not going to tie you to a number. Because -- because it's not appropriate to tie you to any sort of number. Do you have a listing of the folks that you think you're going to want to come at this point?

MR. CHISOLM: At this point, I have a couple. I -- I intend, after looking at discovery, to have at least three or four more.

THE COURT: Tell me what -- tell me how you want to proceed, because we can proceed in a couple of different ways. We can get -- you can get a couple now, and we'll get those issued, put the date of the trial, they anticipate a trial. Put that on there and then go; or you can wait until you've been through discovery and -- and do more.

But you're going to have whatever subpoenas you need done. You know, I don't want you to get -- that's an excellent thing to -- first of all, to bring to my attention. Thank goodness you did. But that's not going to be a problem.

And whichever way you want to do it. You can do a couple now, if those are the names that you know you're gonna want; or if you want to look at discovery and do it next week, that's fine, too. Either way you want to do

it.

MR. CHISOLM: I'd like to look at discovery first, because my needs may change after I look at discovery.

THE COURT: Absolutely.

MR. CHISOLM: I -- I may not need some of the people that I need right now based on --

THE COURT: It will be what it is.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Now, remember just -- I just suggest that's a great -- that's a great thing for you to use Mr. Loy as stand-by counsel, only because he can facilitate --

MR. CHISOLM: Yes, Your Honor.

THE COURT: -- do you know what I'm saying?

And -- and you know, Mr. Loy, just know to -- when you deal with the Clerk's office on behalf of Mr. Chisolm, you know, if -- if you need a subpoena signed and you're having any kind of difficulty, just bring them to me. I'll sign them.

MR. LOY: Thank you, Your Honor.

MR. CHISOLM: Thank you, Your Honor.

THE COURT: I think I can do that. Okay. All right. Now --

MR. HILTON: I pulled these videos and -- and there is some -- some discrepancy between the list that Mr. Chisolm has and the list that I have.

And so, let me just ask Mr. Chisolm: Have you verified that the tapes on this paper that you've passed over, that was from Blair Jennings dated August 8 of 2008 -- are you satisfied that you do have these videos?

MR. CHISOLM: Yes.

MR. HILTON: Okay. All right. Then that's Kenneth Durham, on September 20 of 2007; I have that ---

THE COURT: Is it "Durham" like the city?

MR. CHISOLM: Yes.

MR. HILTON: D-u-r-h-a-m. Tomeika Williams; it was two videos: 9/16 and 9/17. It'd be September 16 and September 17 of '07. And those are in my stuff as well as on his list.

The first video from David White, which is so labeled on September 16 of 2007.

Mr. Chisolm, you follow along with me as I go through these ---

MR. CHISOLM: Yes.

MR. HILTON: --- videos.

The second video being David White on 9/24/2007. The third -- the next video on the -- on the list is David White on November 8, 2007. And then another one from November 26, 2007.

I actually have two copies of this November 16, 2007 video. And I will verify that they're the same video.

And if they're not the same video, I want to make sure that you get a copy of --

MR. CHISOLM: Yes.

MR. HILTON: -- of each.

THE COURT: Absolutely. It's -- good for you for making the note.

(Brief pause.)

MR. HILTON: What's labeled as No. 6 on your -- on Mr. Chisolm's list is a video from Mr. Chisolm dated November 29, 2007. There's another one on his list dated December 18, 2007, which I do not have.

Now, I -- I don't have it in my box. I'm sure it's at the Sheriff's Office. I don't have it here, but apparently --

THE COURT: Well, Mr. Chisolm probably share it with you.

(Courtroom laughter.)

THE COURT: Just let him know. He'll loan it to you, let you copy it.

(Brief pause.)

MR. HILTON: The next one is the video from Don-Survi Chisolm dated September 17, 2007. That's on the list and in my box.

There's another one, November 13, 2007, from Mr. Chisolm; and another one from September 16, 2007.

And I'm not going in chronological order. I'm going by the order that's on his list. And so that's why the -- the dates are out of order.

The next video is Calvin Wade; 9/17/2007. The next one's Joshua Stokes; September 16, 2007. The next one is Siquan [phonetic] Moody; October 8, 2007, which I do not have in the stuff that I brought here; however, it is -- it is on Mr. Chisolm's list.

Next one is Diana Hardy Joseph; September 16, 2007. Next one is Chad Coll, C-o-l-l; September 27, 2007. Next one's Justin Odom; September 28, 2007. And the last one is Nicole -- I guess it's Ruiz, R-u-i-z; September 27, 2007.

MR. CHISOLM: All right. I -- I -- I realize where the discrepancy was in the number of tapes. Mine are consolidated into 11 tapes. Yours are split apart. Like Chad Coll, Justin Odom, and Nicole Ruiz, that's all on one tape in mine. So when I sent you the correspondence saying that we're missing tapes, we're actually not missing any tapes. Mine are just consolidated.

MR. HILTON: And you're satisfied those are the copies of the tapes, that you have a full copy ---

MR. CHISOLM: Yes.

MR. HILTON: --- of the interview?

MR. CHISOLM: Yes.

MR. HILTON: So it appears the only discrepancy we have then is the tape from Mr. Chisolm on -- actually that I need to verify. I think Mr. Chisolm has all the -- all the videos; more than what I have.

MR. CHISOLM: Yes.

MR. HILTON: And again, I will check with the Dorchester County Sheriff's Office, which I already have one time, to make sure that I have all the videos that they have in evidence; because my copies are presumably copies of theirs.

THE COURT: And then you'll double check the -- the -- the duplicative tape to be sure that, in fact, it is a duplication.

MR. HILTON: That's correct.

THE COURT: Okay. Great.

MR. HILTON: One thing I do want to show Mr. Chisolm now, in that I won't be able to make a copy of it -- and I'm not sure that he needs a copy of it just because of the size of it. But I may or may not intend to use this map at trial. It was -- it's actually two maps. And if we could mark these, maybe as a Court's Exhibit.

THE COURT: Absolutely. And I want this sheet, too, so everybody -- and I want to -- just mark a copy. I don't want to take Mr. Chisolm's note, but I want to make a copy of that piece of paper.

And then I want to make a copy of that piece of paper a Court's exhibit. Then I want to copy it as a Court's exhibit and give it back to you guys, if that makes sense.

MR. CHISOLM: Yes, Your Honor.

MR. HILTON: Now --

THE COURT: So give me three copies.

MR. HILTON: I'm not sure it will work, but I -- I would like to keep these maps in my possession. You can mark them as a Court's exhibit, and that way, later on, we're just know that we're using the same map in the trial ---

THE COURT: I understand. If you need -- if you need someone to run down to Kinko's and get a copy or whatever, if -- you know. But let him -- let's let him look at it and see if -- if -- if that's what he needs. But go ahead and let him take a look.

(Brief pause.)

THE COURT: I'm going to mark it for discovery and identification, much like one does discovery deposition and marks an exhibit. And I'll put on the record he's just going to maintain possession of it, because this is an informal conference and not done for any sort of admission purposes at trial at all.

It's only for the purposes of identifying what was shown to Mr. Chisolm and what may be needed to be copied

for Mr. Chisolm. It's only for tracking purposes only. Not for any sort of evidentiary reason at all. In other words, I'm just swiping one of your stickers.

(Marked Court's Exhibit No. 1, map of Clubhouse Road area of Dorchester County.)

(Marked Court's Exhibit No. 2, map of Bacon's Bridge/ Dorchester Road area.)

MR. HILTON: Mr. Chisolm, this has been marked for purposes of this hearing as -- as Court's Exhibit 1. This is a map that was used by David White in his interview with detectives. They showed him this map in the interview with David White, and that's reflected on one of your video tapes. And so I just show you that.

The second one -- show you what's been marked as Court's Exhibit No. 2.

Before I go forward, Court's Exhibit 1 was a map of -- labeled "Clubhouse Road area of Dorchester County.

Court's Exhibit 2 is a map of the Bacon's Bridge/Dorchester Road area, that was also used in the same interview as the other map.

Do you think you're going to need copies of these maps, or are you satisfied with just looking at them?

MR. CHISOLM: I'll take copies of it.

MR. HILTON: All right. I'll ---

THE COURT: And let me just tell you -- let me just

suggest, any of the engineering firms have got copiers, because they've got to do surveys. And they can do it pretty efficaciously I would think.

Did we mark them both and put a sticker on both of them?

MR. HILTON: We did. There's ---

THE COURT: Okay.

MR. HILTON: They're separate.

THE COURT: Very well. I want to do -- I want to mark the copy. I don't want to mark on Mr. -- Mr. Chisolm has an original document. I don't want to mess with his document. I just want to mark a copy and make it an exhibit.

(Marked Court's Exhibit No. 3, list document.)

MR. HILTON: And finally, Your Honor, I do have other stuff here. I'm going to show Mr. Chisolm this notebook. This will not be included in the discovery in that it's only the correspondence that he and I have been writing back and forth. And so I'm not going to copy those again to give him, unless you want a copy.

MR. CHISOLM: That's all right.

MR. HILTON: And you're welcome to flip through there if ---

MR. CHISOLM: I have -- I have copies of it all.

MR. HILTON: Instead of going through the rest of this

stuff, what -- what I'm going again is just make copies of everything, make copies of the pictures. I will make copies of these maps that we've marked as Court's Exhibit 1 and 2. And I will deliver that to Mr. Chisolm hopefully towards maybe the middle of next week.

At that time Mr. Chisolm should be over at the Dorchester County Jail, and I can either -- I think what would be best if I just brought him back over and served him -- put this on the record.

THE COURT: I think -- yeah. Absolutely. And I think what's probably going to be helpful is -- I'm just going to play that by ear. Either just, you know, the -- the rooms downstairs are large enough that -- that he could certainly take a look at them; or we could do it here in court, one way or the other.

But the next time's going to be a little more lengthy, because he's got to go through the other documents. But we'll just -- we'll -- we'll work through that.

And -- oh. And I would just add you're going to copy the pictures and the discs.

MR. HILTON: That's correct.

MR. CHISOLM: Your Honor, could I go on record with a couple of things that I specifically would -- I mean, I don't know ---

THE COURT: That's real helpful.

MR. CHISOLM: --- if they're in there, but --

THE COURT: Yeah.

MR. CHISOLM: The phone records of the victim and the alleged phone records of me, the defendant, okay, if -- if they are in the State's possession; because they were marked in my warrant. So I would ---

THE COURT: What does that mean, "marked in your warrant"? Tell me what ---

MR. CHISOLM: It -- it was sited in my warrant that I was arrested --

THE COURT: Oh, yes.

MR. CHISOLM: -- possibly -- the phone records. And I haven't seen them in four years.

(The Court and Mr. Chisolm talk simultaneously.)

THE COURT: Do ---

MR. HILTON: I have his phone records, and that would be part of the ---

MR. CHISOLM: Okay.

THE COURT: Great. Thanks.

MR. CHISOLM: I need the statements of David White, statements of ---

THE COURT: Well, let me ask this question: The statement of David White, there's a written one, too? Because obviously there's an oral one. But you think there's a written one, too?

MR. CHISOLM: I believe so, yes.

THE COURT: Okay. Well, you should have all the written statements.

MR. HILTON: He --

MR. CHISOLM: I -- not ---

MR. HILTON: Again, that -- that will be in the packet that I give him.

THE COURT: Okay.

MR. HILTON: However, his statement is on video and -- and recorded. If he gave a written statement, they would record him writing it out also. So --

THE COURT: And so -- so -- okay. So the written -- all written statements, but with particularity, take a look to see if there's a written statement of David White --

MR. CHISOLM: Shaquanda L. White, because ---

THE COURT REPORTER: Could you spell "Shaquanda."

MR. CHISOLM: S-h-a-q-u-a-n-d-a. She -- she is sited on one of my warrants. I don't --

THE COURT: Got it.

MR. CHISOLM: I don't see a video, so I'm assuming she has a written statement.

THE COURT: I understand.

MR. CHISOLM: The written statements of any employees from LKQ Auto.

THE COURT: LKQ ---

MR. CHISOLM: KQ ---

THE COURT: --- Auto.

MR. CHISOLM: --- Auto Parts.

THE COURT: Uh-huh.

MR. CHISOLM: Yes.

THE COURT: All right. Now, understand that Mr. Hilton's going to give you all the written statements.

MR. CHISOLM: Yes.

THE COURT: But he's going -- because you have -- you've addressed these specifically, he's going to take special care to look to see if these are in existence. Okay.

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right.

MR. CHISOLM: Criminal records of any witnesses the State intends to call.

THE COURT: Okay.

MR. CHISOLM: All right.

THE COURT: Now, they will do that. It will be closer to trial, because they probably don't know right now who they're going to call. So ---

MR. CHISOLM: Okay.

THE COURT: --- it will be closer to trial, but most assuredly. Yes.

MR. CHISOLM: Ballistics reports of the -- of the projectile found in the victim. I've never seen these, so I ---

THE COURT: Okay.

MR. CHISOLM: --- I would like the ballistic reports.

THE COURT: Okay.

MR. CHISOLM: Any fingerprint reports.

THE COURT: Let me ask this question ---

MR. CHISOLM: Okay.

THE COURT: --- do you have the stuff back from SLED? Do you have the -- the ballistics and the fingerprint stuff?

MR. HILTON: We do. We have all that. I've looked over that.

THE COURT: Great.

MR. HILTON: And I'll give that to Mr. Chisolm.

THE COURT: It's in the -- it's in the stuff you're going to copy. Okay. Good.

MR. CHISOLM: I need another copy of the coroner's report, but I'm pretty sure that I have that. If the coroner made a video, that they should have, and any pictures, I would need that.

The video of the crime scene or any pictures included with that.

THE COURT: Yes.

MR. CHISOLM: An inventory sheet of the vehicle when it was searched; any items seized or items given back. I -- I need ---

MR. HILTON: Let me stop Mr. Chisolm right there and just say that I am not aware of any video of the crime scene. There are numerous pictures, and those pictures will be included. I am not aware of any video.

If he has seen something that references a video, please let me know and I will try to track that down. But I have personally looked through the evidence at the Sheriff's Office, and I'm not aware of any video ---

THE COURT: Okay. Do you -- have you -- because that does happen, where the Sheriff's Department's got something and -- and -- and the Solicitor's Office is the last to know.

Have you seen any indication in any thing else that leads you to believe that there may be a video of ---

MR. CHISOLM: No, Your Honor. I was ---

THE COURT: Okay.

MR. CHISOLM: --- just covering all the bases.

THE COURT: All right. Good for you. That's no problem with that.

MR. CHISOLM: And any and all chain of custody forms.

THE COURT: Okay.

MR. CHISOLM: Because I -- I have none -- none of

those.

THE COURT: Okay. Yes.

MR. CHISOLM: And that would be it. Just -- and I need the inventory reports from both searches and seizures, because they actually searched the vehicle twice. I need the inventory items seized from both the times.

THE COURT: And you also wanted any -- any documentation that shows a return of items ---

MR. CHISOLM: Yes.

THE COURT: --- to anyone.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Got it.

MR. HILTON: Mr. Chisolm, I don't want you to disclose your defense to me or anything like that, but one thing that I'm going to need to know ahead of time is that -- the 2006, I believe it was, Dodge Durango, grey in color -- - silver in color, is still impounded at the Sheriff's Office. Are -- are you going to need that for trial?

MR. CHISOLM: No. That's a good question. I'm going to say I don't know right now, actually, on that question.

THE COURT: And I was going to tell you, you can change your mind.

MR. HILTON: Absolutely.

THE COURT: It's okay.

MR. CHISOLM: I'm not -- not a hundred percent sure.

THE COURT: Why don't we say this: At this point, based on the discovery that you have seen, you just don't have any clarity about it at this point. Can we -- we may forget -- I may forget to ask again, Mr. Hilton may forget to ask again about it. But if you do need it, will you -- will you try to help remember to -- to let that be known?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well. Great.

MR. HILTON: Is there anything else at this time you want to address, Mr. Chisolm?

MR. CHISOLM: No, sir.

THE COURT: Now, understand, this is really important, this is -- this discovery is ongoing. We're going to hopefully get back together next week. And if things come up and you need additional information, you know, that -- just let that be known.

And -- and be mindful that if -- if interimly, before we're together in this format, if you need Mr. -- you know, if you need to get messages around, Mr. Loy is certainly really an excellent source to do that; particularly, you know, when General Sessions is going on.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. It just -- it's just very

efficacious and efficient for -- for you to be able to do that. Okay.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Don't hesitate to do that. Really. Because as you look at the discovery, other issues may arise, and -- and in all -- in all candor, I do believe that Mr. Hilton's trying to get everything to you.

But don't hesitate. If you see something and you think something else is out there, let him know that, because it is -- it is not -- it's -- it's not unheard of that there can be something that the Sheriff's Department has and -- and for whatever reason, it could be a myriad or reasons, perhaps you see that as being important and that that -- you know, and perhaps they didn't. And -- and it's sort of fallen through the cracks.

So if you think of something like that, if -- as you go through the discovery, if you have concerns about things that you think are out there that you haven't received, just let Mr. Hilton know.

And probably the most efficient way to do that would be maybe either write him or get a message through Mr. Loy, particularly if we're in General Sessions. That will be pretty -- pretty efficient, because believe it or not, Mr. Chisolm, oft times that could help a solicitor, too.

And just -- so as you go through, if you have

questions, you know, don't assume anybody's trying to keep anything. It very well may be that -- that he doesn't know that it exists either, and you'll help each other. Okay?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. Very well.

MR. HILTON: And I'll tell Mr. Chisolm one thing that I -- I will do is contact Captain Van -- Van Doren over at the Dorchester County Jail.

If, before next week, he discovers something that he needs or something that he wants to address next week, if he will get with someone over at the jail, they'll let Captain Van Doren know and then we can, you know, have you brought over at your request, really.

MR. CHISOLM: Thanks.

THE COURT: In other words, sort of like you had somebody at Berkeley. And you mentioned somebody's name who was your legal, sort of, ombudsman person.

MR. CHISOLM: Yes.

THE COURT: Van Doren's going to be your legal ombudsman.

MR. CHISOLM: I'd prefer that it's not Captain Van Doren, because he was actually the head detective on this ---

THE COURT: Oh.

MR. CHISOLM: --- same case before he became the captain of the jail.

THE COURT: Thank you for that.

MR. CHISOLM: Yes.

THE COURT: Thank you -- thank you for that. Good. Thank you for that.

MR. HILTON: It'd be Lieutenant Taylor then.

THE COURT: Do you know who that is?

MR. CHISOLM: Yes.

THE COURT: Okay. Is that okay?

MR. CHISOLM: Yes.

THE COURT: Okay. Good.

MR. HILTON: Finally, Your Honor, I sent Mr. Chisolm a letter back just a couple of weeks ago, a week or two ago, June 30, 2011, that specifically requested any alibi defense. Under Rule 5(e)(1) of the Rules of Criminal Procedure, the discovery rule that requires Mr. Chisolm to alert the Solicitor of any alibi witnesses or addresses or how to contact them essentially, so we can verify that.

I have not heard back from Mr. Chisolm on any alibi witness list or any defense of alibi. And so if he is going to employ that defense, we do need to know that fairly soon.

THE COURT: Okay. Very well. And again, he may or may not wish to -- to talk to stand-by counsel about that.

Okay. Just look at the rule yourself, and if you wish, address it with Mr. Loy. And then if that's appropriate for you to -- to disclose, then -- then if you could do that some time in the near future. It'll just keep -- it will allow the trial to go forward. You know, because if it comes late -- you know, late in the process, then it could -- it could cause an unhappy delay. And as I understand it, this case has been set for date certain.

MR. CHISOLM: Yes.

THE COURT: Okay. So I -- I don't want you to address it now, but ---

MR. CHISOLM: Yes, Your Honor.

THE COURT: --- just be mindful of that. Okay.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Great.

MR. HILTON: And I would mark that letter as a Court's Exhibit.

THE COURT: Great. Yeah.

MR. HILTON: A copy of the letter.

THE COURT: A copy of the letter.

MR. HILTON: This would be Court's Exhibit ---

THE COURT: You -- you remember the letter?

MR. CHISOLM: Yes.

THE COURT: Great.

(Marked Court's Exhibit No. 4, letter.)

THE COURT: Okay. Great.

MR. CHISOLM: Yes. I have a copy.

THE COURT: And that one you can take. That's evidentiary.

MR. HILTON: In furtherance of that rule, Your Honor, I think the requirement is the defendant has to file a discovery motion; and through his attorneys, he has done that.

THE COURT: Yep. Yep.

MR. HILTON: If not, this hearing today, I think, is -- is discovery motion enough to -- to ask for the discovery from the State. And so in return, the State is asking for reciprocal discovery, as well as any notice of alibi.

THE COURT: Got it.

MR. HILTON: Anything else, Mr. Chisolm?

MR. CHISOLM: Yeah. You will be receiving correspondence today, and you can disregard that. It was in reference to this hearing.

MR. HILTON: Okay.

THE COURT: Okay. Great. All right. So just -- just for your planning purposes, if there are just any matters that -- that we need to address, we'll do that next week.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Great. Thanks.

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
County of Dorchester) 2008-GS-18-00009

State of South Carolina)
)
Plaintiff,)
)
Vs.) Transcript of Record
)
Don-Survi Chisolm,)
)
Defendant.)
)
)

July 22, 2011
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
Attorney for the Plaintiff

Don-Survi Chisolm, Pro se Defendant

John Loy, Esquire
Stand-by Counsel for Mr. Chisolm

Bonnie H. Kelly, CVR
Circuit Court Reporter

MR. HILTON: May it please the Court, Your Honor.

THE COURT: Yes.

MR. HILTON: Before you stands Don-Survi Chisolm. He's charged in Indictment 2008-GS-18-0009, with the offense of murder. He's been examined and is representing himself on these charges, with stand-by counsel being Mr. John Loy, with the Public Defender's Office.

I brought Mr. Chisolm over today to address discovery issues that we had previously addressed in a hearing prior to this. And also I wanted to bring Mr. Chisolm over, because in a letter subsequent to that prior hearing, he asked -- or he said he was still having trouble with his subpoenas. And so I wanted to allow him to address that issue, and deliver some discovery to him.

MR. CHISOLM: With the -- in regards to the letter, that was the letter that day that I told you to disregard that letter; that you'd be getting it the same day. I addressed everything with the subpoena and the issues at that time, so ---

THE COURT: Good.

MR. CHISOLM: Okay.

THE COURT: Good.

MR. CHISOLM: So ---

THE COURT: So that's -- that's ---

MR. CHISOLM: Yeah.

THE COURT: --- that's progressing.

MR. CHISOLM: Yes. That's taken care of.

THE COURT: Good.

MR. CHISOLM: I received mail from the Clerk of Court this morning with subpoenas and everything. Everything's taken care. That's --

THE COURT: Good.

MR. CHISOLM: That's been completely resolved and ---

THE COURT: Good.

MR. CHISOLM: --- I appreciate that.

THE COURT: Good. All right. And I understand that -- I -- I just noticed that there was a box on Counsel table, and I was hoping it wasn't for me, work for me. And Counsel informed me, no, that it was work for you.

MR. CHISOLM: Yes, Your Honor.

THE COURT: So we -- you want to go through that now?

MR. HILTON: Well, in that previous hearing --

THE COURT: Uh-huh.

MR. HILTON: -- you know, the State was going to just completely copy everything -- everything that we had again, regardless of whether Mr. Chisolm had it or not.

We had addressed the video tapes, and determined that he did have all of those video tapes that the State had in its possession. And so that -- that part has been taken care of.

THE COURT: There was one of them that had to be checked on.

MR. CHISOLM: Actually, in -- in regards to that, okay, one did need to be checked on, Your Honor, and that's the one that I had. He did not have a copy of it, and I'll be more than willing to give him that copy.

But I -- I've watched the video tapes and one of mine is missing, an interview of David White. He had an interview from November 16, 2007. It said it was on my tape, but that portion is actually blank. So ---

THE COURT: Great.

MR. CHISOLM: --- I'm not sure -- it -- it would be his fourth interview. I'm not sure if -- if he actually had a fourth interview or if that's a misprint. But if there is a fourth interview, I'm missing that and I -- I need that.

THE COURT: And you think it's on that date?

MR. CHISOLM: Yes. It's on -- it says on the -- it says on the thing "11/17 ---

THE COURT: Okay.

MR. CHISOLM: --- 07." I mean, 11/16. I apologize. I'm sorry.

MR. HILTON: November 16, 2007, fourth interview with David White?

MR. CHISOLM: Yes.

THE COURT: You have interviews 1, 2, and 3.

MR. CHISOLM: Yes. I -- I have those.

THE COURT: Great.

MR. HILTON: I will certainly check on that. I know that Mr. Chisolm has expressed some concern, because we did say that we would try to get him his discovery towards the middle of this week. And -- and I didn't want to delay that any more.

I still need to print out the pictures. There's some discs in the -- CD -- compact discs in this -- in this box that have the pictures on there. We still need to print those out and give them to Mr. Chisolm.

THE COURT: Okay.

MR. HILTON: There's also the two enlarged maps that we marked as Court's Exhibit 1 and 2 ---

THE COURT: Right.

MR. HILTON: --- for identification. I think it may have been State's Exhibit 1 -- 1 and 2 for identification.

And also the index of material that we were going to give to Mr. Chisolm.

THE COURT: Right.

MR. HILTON: That's been handwritten at this point, but has not been typed up and prepared. And so I would like to go ahead and deliver Mr. Chisolm the copies of all the printed documentation and the four CDs containing the

pictures regarding the case. I'd like to give that to him and then possibly next week -- I know there's a civil term -- maybe at some point bringing Mr. Chisolm up, and I can deliver the rest of that stuff with the maps and printed pictures and an index of all the stuff that we have given him.

THE COURT: When do you think you'll be prepared to -- to do that, because it -- and just -- just for Mr. Chisolm's knowledge, I had Mr. Hilton in trial last week and this week.

MR. CHISOLM: Yes, Your Honor.

THE COURT: That's a little unusual to have one solicitor for both weeks. So that's probably why -- why he's a little bit delayed, because I don't think he's letting -- I think he's pretty much marshaling this himself, just from my observation. So that's probably why it's a little bit delayed.

MR. CHISOLM: Yes, Your Honor.

THE COURT: And -- and go ahead. Tell me when you think you'll be ready, because we'll talk about the term next week. Because I don't want Mr. Chisolm anticipating --

MR. HILTON: I think Tuesday or Wednesday of next week, depending on the ---

THE COURT: Well, that's ---

MR. HILTON: --- term and how things are going with it.

THE COURT: Exactly. Let -- let me share -- just let me share with you where that term is at this point: At this moment, there are two condemnation cases that we will try. If those two cases settle -- it may be a little problematic, because I'll have -- I'm going to need to get Bonnie to come down. And Court Administration -- if they think she's not in trial, they'll probably snatch her and send her to Pickens or Walhalla or someplace.

So y'all gonna have to bear with me just a little bit in that regard just because I've got to -- I've got to get her.

And then I'm -- I'm out, and then I'm -- then on the week of the -- of August the 1st, I'm in Orangeburg and I don't know who's here.

But I -- we will absolutely endeavor to -- to -- as soon as -- as Mr. Hilton's ready with those things, to get those delivered to you, because I do want you to have them just as soon as possible.

So it might be that if that term gets -- starts falling apart -- if the term doesn't fall apart, we'll try to do it Tuesday, because I -- it'll go into Tuesday, the condemnations. But if that term has difficulty and begins to fall apart, we will do that sometime next week, but I

gotta work with Court Administration to see when I can grab Bonnie back ---

MR. CHISOLM: Yes, Your Honor.

THE COURT: --- from Walhalla or Dillon or Pickens.

But we'll -- we'll just see how that goes. But we will certainly get back together if at all possible next week. But if there's a little bit of a hiccup, that's why.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

MR. HILTON: I ---

MR. CHISOLM: I apologize.

MR. HILTON: Go ahead.

MR. CHISOLM: Is it at all possible that you have a written inventory right now of what's there, since I have more time on my hands and over the weekend I can go through everything and -- and like, if you just want to photocopy that for me or -- and I can go through everything. And that way on Tuesday, if something was missing out of there, we -- we'd know on Tuesday instead of, you know, having to find out later on that week.

MR. HILTON: I do not have the inventory here yet.

MR. CHISOLM: Okay.

MR. HILTON: Like I say, that's in the process of being typed up.

MR. CHISOLM: Okay.

MR. HILTON: But I will get that to you. I'm confident that everything that's on the inventory is in the -- in the stack; however, if it's not, Mr. Chisolm can write me or let his liaison know at the jail, and I'm able to contact him fairly quickly ---

THE COURT: Have you got the handwritten one? Where's that?

MR. HILTON: It's between two interns.

THE COURT: Gotcha.

MR. HILTON: One intern has some of the stuff, and the other intern has the other stuff. And they're not -- well, one of them's here with me today; the other one is not. And so --

THE COURT: So we couldn't get -- the handwritten, we could only give Mr. -- Mr. Chisolm half.

MR. HILTON: We could only give part ---

THE COURT: So -- but you'll endeavor to -- to get that to him.

MR. HILTON: I anticipate that everything should be complete when we ---

THE COURT: Okay.

MR. HILTON: --- when or if we can bring him over next week and I can give him the printed pictures, the index, and the copies of the -- of the -- of the large maps ---

THE COURT: Okay.

MR. HILTON: --- that I showed to him at the previous hearing.

THE COURT: Okay.

(Mr. Hilton confers with the intern.)

THE COURT: Oh, great. The we can give -- let's give him the handwritten one.

MR. CHISOLM: Thank you.

THE COURT: That way you can look at over the weekend.

MR. CHISOLM: Thank you, Your Honor.

THE COURT: Understanding it's going to be "prettied up;" it's going to be typed.

MR. HILTON: We'll -- we'll note that as the "unofficial copy."

THE COURT: We will note it -- yeah. It will be the handwritten one.

MR. CHISOLM: Yes, Your Honor.

THE COURT: But that would be great, because as you said, with the weekend, you can do a comparison. That way, when we come back the first of the week, if there's some issues with it, we can deal with them early.

MR. CHISOLM: Yes.

THE COURT: That sounds good. Yeah. I like that. That's good. Great.

MR. HILTON: While we're waiting on those copies, for

security purposes, I've been in contact with the jail. They have -- it's my understanding -- and Mr. Chisolm can correct me if I'm wrong -- but they have set up a room for Mr. Chisolm where he can go in and watch his video tapes. They're not just going to give him all the stuff to take back in the cell with him.

THE COURT: I understand.

MR. HILTON: But he can watch those video tapes, and I think that's going to be true with the -- with the CDs as well.

But for security purposes, I'd like to turn over this box of stuff to the jailer, so that that can be delivered to that room for Mr. Chisolm.

THE COURT: Okay. Well, here's what I want to do: I want to seal it and sign it, both of you.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Because I want, just for -- for safe-keeping purposes, make sure it doesn't fall out of the -- looks kind of heavy. Make sure it doesn't fall out and stuff spill out of it. Who's got packing tape?

(Brief pause.)

MR. HILTON: Mr. Chisolm, let me show you in here now.

(Brief pause as Mr. Hilton opens a box and confers with Mr. Chisolm.)

THE COURT: Oh. And I wanted the record to reflect

that Mr. Loy is present in the courtroom.

(Brief pause.)

THE COURT: And Mr. Chisolm, draw a line.

(Mr. Chisolm complies.)

THE COURT: There you go. There you go. Across the -- there you go -- across the box and across the tape.

(Mr. Chisolm complies.)

THE COURT: There you go. Great. Great. Yeah. There you go. Just like that. Yep. Okay. Great. All right. Anything else we need to do?

MR. HILTON: We can just ---

THE COURT: Didn't you ---

MR. HILTON: --- set it aside until we get that other documentation.

THE COURT: Oh. That other -- very well. Of course. Of course.

Any issues that you're having other than that?

MR. CHISOLM: No, Your Honor.

THE COURT: Okay. Great. You have enough time to look at the tapes and things like that?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

MR. HILTON: And I do -- I do know, from Mr. Loy, that Mr. Chisolm expressed some desire to speak to me about whatever issue. And if -- if you want to do that, now's

the time ---

MR. CHISOLM: That -- it was -- that was ---

THE COURT: That was ---

MR. CHISOLM: --- in reference to all this.

THE COURT: --- getting your stuff? Great.

MR. HILTON: Okay.

THE COURT: Good. Good, good, good.

(Brief pause.)

MR. HILTON: Let me just run check, Your Honor.

THE COURT: Okay. Thank you.

(Briefly off the record.)

THE COURT: Oh, no. You're -- you're back empty handed.

MR. HILTON: Your Honor, it was written on legal-size paper. So he had to go to the Clerk's office because we didn't have any legal-size paper.

THE COURT: Got it. Great. Good.

(Briefly off the record.)

THE COURT: Great. Great, great, great.

MR. HILTON: Just hand him the paperwork.

(Mr. Hilton hands papers to Mr. Chisolm.)

MR. HILTON: Count those. I think it's 24.

(Mr. Chisolm complies.)

MR. CHISOLM: 24.

(Brief pause.)

THE COURT: All right. Mr. Loy has arrived. How many pages did -- did you count, Mr. Hilton?

MR. HILTON: I think both of us counted 24 pages.

THE COURT: How many pages did you count?

MR. CHISOLM: 24, Your Honor.

THE COURT: 24. All right. 24 pages. And -- and that is the handwritten inventory, and you anticipate it's going to be typed.

MR. HILTON: That's going to be a typed list on our letterhead. That's 24 pages of relatively detailed information. Nothing's grouped more than just a few pages. So it's fairly descriptive of what should be contained in the box being ---

THE COURT: In the box.

MR. HILTON: --- delivered to him today.

THE COURT: In the box that's already been delivered to the folks who are going to deliver the sealed box back to the jail.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well. All right. Anything further today?

MR. HILTON: Not that I'm aware of. Mr. Chisolm?

MR. CHISOLM: Nothing -- nothing ---

THE COURT: Mr. Chisolm, nothing from you?

MR. CHISOLM: --- further, Your Honor.

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
County of Dorchester) 2008-GS-18-00009

State of South Carolina)
)
Plaintiff,)
)
Vs.) Transcript of Record
)
Don-Survi Chisolm,)
)
Defendant.)
)
)

August 22 - 23, 2011
Orangeburg, South Carolina

B e f o r e:

The Honorable Edgar W. Dickson, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
Matt Austin, Esquire
Attorneys for the Plaintiff

Don-Survi Chisolm
Pro se Defendant
John Loy, Esquire
As Stand-by Counsel for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

MR. CHISOLM: My first -- my first argument, Your Honor, is that officers willfully and knowingly, with reckless disregard, omitted facts, and abandoned the truth while submitting false information on an affidavit for a warrant.

THE COURT: All right, sir.

MR. CHISOLM: My second argument on this warrant, Your Honor, be that the search warrant failed to mention specific information that -- I'm sorry. The search warrant failed to mention specific information that was being -- specific items, I'm sorry, that were being sought. In such, it -- let's see. Give me one second, Your Honor.

THE COURT: Yes, sir.

MR. CHISOLM: In such that the search warrant violated the -- the -- violated the express constitutional requirement of warrants, particularly describing things and items to be sought.

THE COURT: All right, sir. Anything else?

MR. CHISOLM: No, Your Honor. I'm prepared to proceed as —

THE COURT: You need to tell me how they abandoned the truth.

MR. CHISOLM: Okay. All right. I'll -- you want me to start with the facts, Your Honor?

THE COURT: Yes, sir.

MR. CHISOLM: Okay. September -- on September 15, 2007, Your Honor, detectives responded to a homicide on the Clubhouse Road in the Ridgeville area. Through further investigation on it, it was determined that the victim died on September 13, 2007.

After -- detectives continued their investigation, and it was determined that two of the last people to be seen with the victim on September 13, 2007, was my co-defendant, David Leon White, and myself.

On September 17, 2007, detectives served a search warrant for my vehicle, 2005 Silver Dodge Durango, issuing -- the Silver Dodge Durango. On the affidavit for the warrant, officers cited inconsistencies and statements received throughout their investigation as probable cause for the issuance of this warrant.

The warrant was executed. No items of evidentiary value were taken from the vehicle at that time. The investigation continued.

On September 27, 2007, officers submitted for and received yet another search warrant for my 2005 Dodge Durango. The affidavit for this search warrant was word-for-word identical as the affidavit for the September 17, 2007 search warrant less the addition of a recent set of facts pertaining to the purchase of a car seat at LKQ Auto

Parts. I'll read specifically, Your Honor, the addition to the warrant.

THE COURT: All right.

MR. CHISOLM: And -- and this is what is in question, Your Honor.

THE COURT: Okay.

MR. CHISOLM: The -- the additional ---

THE COURT: And this is the additional -- you're saying this is additional wording?

MR. CHISOLM: The -- the additional wording, yes.

THE COURT: Okay.

MR. CHISOLM: All right. As it pertains to the September 27, 2000 [sic] search warrant.

THE COURT: Yes, sir.

MR. CHISOLM: The additional wording is (as read) "On November 20 -- I mean, September 26, 2007, Detective Walsh and Detective Giglio met with employees at LKQ Auto Parts of Charleston. Officers obtained verbal and written statements that Don-Survi Chisolm purchased a passenger seat -- passenger front seat for a Dodge Durango on September 14, 2007. This search warrant is requested to -- is requested to determine if any evidence of the crime is in -- in -- is inside the above vehicle."

THE COURT: And that's the additional wording?

MR. CHISOLM: That's the additional wording, Your

Honor. And also in the search warrant, it -- it follows to my second argument that detectives knew that they were -- they were searching for a car seat. And in the description of property being sought, detectives failed to mention that -- that they were particularly looking for this car seat.

THE COURT: Okay. And -- all right, sir. And Mr. Chisolm, let me make sure I understand this. They said that L -- what, LKQ Auto Parts?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Said that who purchased the front seat?

MR. CHISOLM: The Detective Walsh and Detective Giglio said that I, Don-Survi Chisolm, purchased the car seat on September 14, 2007.

THE COURT: And when you say a "car seat," like for an infant?

MR. CHISOLM: No. I'm sorry, Your Honor. A front passenger seat for my 2005 Dodge Durango.

THE COURT: Okay. A replacement front passenger seat?

MR. CHISOLM: Replacement, yes. Yes, Your Honor.

THE COURT: Okay. All right, sir. Just wanted to make sure I understood. Okay. All right, sir.

MR. CHISOLM: Yes, Your Honor. Okay. Now --

THE COURT: Yes, sir.

MR. CHISOLM: -- as -- as -- as we have just covered,

I've received all of my discovery.

THE COURT: Uh-huh.

MR. CHISOLM: And, Your Honor, at the conclusion of discovery, the -- the State has failed to provide any proof of a purchase or a final transaction of a seat -- a passenger seat for a 2005 Dodge Durango on 9/14/2007 or any day thereafter by me, Don-Survi Chisolm, at LKQ Auto Parts.

As per -- along with that, Your Honor, detectives -- I'm sorry -- that the State has failed to provide any witness statements of a final transaction or a purchase taking place by me at LKQ Auto Parts on 9/14/2007 or any day thereafter.

The State has also, Your Honor, failed to provide any witness statements of me taking control or possession of a passenger seat at LKQ Auto Parts on 9/14/2007 or any day thereafter.

And lastly, Your Honor, the detectives -- I'm sorry, the State has failed to provide any witness identification of me being at LKQ Auto Parts on 9/14/2007 or any day thereafter.

And when I -- when I speak of any witness identification, Your Honor, I mean, they -- they have not provided any photo lineup, any photos that are signed and dated by any witnesses that they actually saw me at the

location that the detectives are saying I was at.

THE COURT: All right. Anything else with that?

MR. CHISOLM: No, Your Honor.

THE COURT: Okay. Mr. Chisolm, what evidence did they find as a result of this search warrant that you want me to ---

MR. CHISOLM: As a -- as a result of the search warrant, Your Honor, the -- they came upon the knowledge that my car seat was changed. Anything else -- my -- my car was actually cleared of -- of any apparent crime. But the knowledge -- the knowledge of the car seat, I -- I want that to be suppressed.

They -- there's a cell phone -- two cell phones and SIM cards -- actually, I can be very specific. I'm sorry. The knowledge of the car seat being changed, Your Honor, for the 2005 Dodge Durango, is one of the things I would like suppressed.

Also, in addition, Your Honor, it was a Nokia cell phone, Serial No. 0516267JL05TC, Model No. 601D. This cell phone was pink and blue in color. Along with that is a SunCom SIM card, 8901490110014686766.

And with -- with the cell phone, Your Honor, when the State searched the vehicle, they actually without warrant, searched the cell phone and came up with a -- with a number for the cell phone as [redacted]. And I ask

that the knowledge of that number be suppressed, Your Honor, and along with that, any phone records that -- that were obtained from receiving that number.

THE COURT: And the reason you want the knowledge of the cell phone suppressed was because ...

MR. CHISOLM: I -- I -- I think that the State intends to use any knowledge of this cell phone against me.

THE COURT: No. I understand that.

MR. CHISOLM: Oh.

THE COURT: But you -- you're saying it's part of an illegal search or ...

MR. CHISOLM: Yes, Your Honor.

THE COURT: It's part of -- they found it at the same time they did the —

MR. CHISOLM: Well, they found it inside the truck and they actually illegally searched it after it was with the truck. Which is the second motion I have if this motion didn't go through. I have a motion for the illegal search and seizure of the cell phone.

THE COURT: Okay.

MR. CHISOLM: With cell phone records and numbers.

THE COURT: Now, is this -- is that a result of the —

MR. CHISOLM: This was as a result of -- of the search warrant, Your Honor.

THE COURT: The same search warrant?

MR. CHISOLM: Yes. When they -- when they -- they pulled me over for the search warrant, Your Honor, and I was ordered out of -- out of the vehicle at gunpoint by six officers.

THE COURT: Uh-huh.

MR. CHISOLM: When they ordered me out of the vehicle, they -- anything that was inside of the vehicle had to be left inside the vehicle -

THE COURT: Uh-huh.

MR. CHISOLM: -- at the time. So that was left inside of the vehicle.

THE COURT: Okay.

MR. CHISOLM: Yes.

THE COURT: Okay. The -- the cell phone -

MR. CHISOLM: Yes, Your Honor.

THE COURT: -- was inside the vehicle?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Not in the trunk of the vehicle?

MR. CHISOLM: No, Your Honor. It was -

THE COURT: Okay.

MR. CHISOLM: -- inside -- I was actually ordered to put everything that was in my hands down by six officers at gunpoint, so that they could commandeer the vehicle. And —

THE COURT: And that was as part of the September 27, '07 search warrant?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. All right, sir. What else, Mr. Chisolm?

MR. CHISOLM: That's it, Your Honor. I'm prepared to call any witnesses if need be to further my points.

THE COURT: Do you have -- I —

MR. CHISOLM: I would actually like to call Detective Giglio -- the detectives who served the search warrant, so that they can attest to their case notes and the fact that no one ever acknowledged me purchasing anything on 9/14/2007, Your Honor. If that's possible.

THE COURT: I don't know if -- I -- is -- is -

MR. CHISOLM: If the State contests.

THE COURT: -- detective here?

MR. HILTON: He is here, Your Honor.

THE COURT: Okay. Well, do you -- bring him on up. We'll --

MR. HILTON: And Your Honor, while he's coming up, I just -- the search warrant that Mr. Chisolm is talking about and I'll show it to him.

THE COURT: Yeah. Make sure —

MR. HILTON: We'll make that a Court's exhibit.

THE COURT: Okay. Mark it -- no. I need to -- I

THE COURT: I notice you've got a lot of stuff there.

A Yes, sir.

THE COURT: All right. All right, Mr. Chisolm.

MR. CHISOLM: If I could have just one more second, Your Honor. I just want to gather a couple of pieces of paper. I apologize for the inconvenience.

THE COURT: Take your time.

(Brief pause)

THE COURT: Are you ready, Mr. Chisolm?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. You -- we've already sworn -- is it Deputy Giglio?

A Yes, Your Honor.

THE COURT: He's already been sworn.

MR. CHISOLM: All right.

DIRECT EXAMINATION BY MR. CHISOLM:

Q Detective Giglio --

A Yes, sir.

Q -- is it true that you signed the search warrant that you submitted the affidavit for 9/2/7 -- 9/27/2007 search warrant?

A Yes, sir, I did.

Q Okay. Did you report to LKQ Auto Parts on 9/14/2007?

A If you'll give me just a moment to refer to my notes.

Q Yes.

(Brief pause)

A Yeah. I -- I didn't -- your question was, did I report to LKQ on September 14th?

Q Yes.

A Okay. I -- I went LKQ Auto Parts on September 27 and obtained a written statement from Mr. Richard Jones, who was an employee of LKQ.

Actually, Detectives Bistromowitz and Detectives Morgan, I understand made contact with the employees of LKQ which led us to probe that investigation further in the matter.

Q All right. I apologize. Yes. That was 9/26. Okay. Did -- did you receive any witness state -- I'm sorry. Did you receive any receipts or any proof of a transaction, a finalized transaction or purchase, taking place on 9/14/2007 from LKQ Auto Parts?

A No, sir. I did not receive any finalized transactions. I received an initial copy of the receipt with a -- with a quote or request for a seat purchase. Also, obtained statements and information from employees of LKQ who identified Mr. Chisolm and his wife Natalia as customers who came in the business to acquire a seat.

And then upon further investigation in this case ---

Q Detective Giglio —

THE COURT: Wait a minute. Wait a minute. Let him

finish answering the question.

A Okay. Upon further investigation in this case, after the search warrant was executed on your vehicle, we compared the serial numbers from the passenger seat side, that was placed in your vehicle to the vehicle at LKQ Auto Parts which matched the same serial numbers. Therefore, the driver's seat that was still at LKQ matched the passenger side seat that was now in your vehicle.

Q Detective Giglio, the -- the question that's being asked is: On 9/2 -- on 9/27/2007, when you served the search warrant, you stated that you -- that employees at LKQ Auto Parts confirmed a purchase on 9/14/2007. We are asking -- I am asking, as to your knowledge at the time of 9/27/2007, not upon your further investigation, On 9/27/2007, with the combined knowledge of yourself, Detective Walsh, Detective Bistromowitz, and Detective Morgan, over a two-day investigation, did you all come up with any finalized purchase or proof of a transaction at LKQ Auto Parts, yes or no?

A No, sir. I didn't find any final proof that you had purchased it. But I was advised that you came in possession of it. It was disputed whether or not the purchase was a legal transaction.

It was unclear on how the seat came into your possession. But ...

Q Okay. According to your answer you just said, you were aware that I came into possession of it. And at the end of your answer, you said you were -- it was not determined how I came into possession of it. The -- the question I'm asking is: Did anyone -- did you receive any statements regarding exactly how I came into possession of the seat? Did anyone tell you? Did you receive any statements from any witnesses that a seat from LKQ Auto Parts was taken by me on that day, on 9/14/2007? Is there anyone that confirmed that they saw me clearly take possession and control of a seat from LKQ Auto Parts on September 14, 2007?

A Give me just one second, sir.

Q Yes.

THE COURT: Take your time, Detective.

(Brief pause)

A Mr. Chisolm, I'm sorry. Could you repeat the question?

Q Yes, sir. Did you receive any statements from any employees at LKQ Auto Parts --

A I ---

Q -- that they witnessed me take control or possession of a seat from -- from LKQ Auto Parts on September 14, 2007?

A No, sir. I -- I -- I did not. Through the course of

investigations, Detective Morgan and Detective Bistromowitz initially responded to LKQ Auto Parts. They inquired in regards to the seat which led us to investigation. Like you said, we never received any final transaction receipt that you ---

Q So your answer is "no"?

A No, sir.

Q Thank you. All right.

MR. CHISOLM: Your Honor, I'd like to put the -- the Court's Exhibit, the receipt.

THE COURT: Okay. It would be Defense Exhibit, your defense.

MR. CHISOLM: I'm sorry. Yes.

THE COURT: Okay.

MR. CHISOLM: Defense Exhibit. The receipt that Mr. -- Detective Giglio mentioned.

THE COURT: Uh-huh. If you'd mark that as Defendant's 1.

(WHEREUPON, Defendant's Exhibit No. 1 was marked and entered)

THE COURT: Do -- do you need it or is that for me to ---

MR. CHISOLM: No. I -- I do not need it, Your Honor.

THE COURT: Okay.

MR. CHISOLM: I have a copy.

THE COURT: Okay. If you'd hand it up. I'm assuming you want me to look at it.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. All right.

Q Detective Giglio, in reference to this receipt --

A Yes, sir.

Q -- could -- could you tell me exactly what this recreated sale receipt? What -- what it is ---

THE COURT: I'm -- I'm going to hand him the exhibit -

MR. CHISOLM: Yes.

THE COURT: -- so he can look -- look it over.

MR. CHISOLM: Yes, Your Honor.

THE COURT: This is Defendant's Exhibit No. 1. And this is an invoice from -- looks like -- well, I'll let you look at it --

A Yes, sir.

THE COURT: -- and see if you've seen it. Okay. And Deputy Giglio, have you seen that receipt before?

A Yes, Your Honor.

THE COURT: Okay. All right. Now, all right. Mr. Chisolm.

Q Could -- could you tell me -- actually, I'm sorry. Could you tell me what this recreated sales receipt is -- is saying? Does it -- it's not a finalized transaction.

What information did you receive from this receipt?

A The receipt itself or the ---

Q Well, from the employees. What -- what -- what was the basis of you collecting this receipt and putting it into evidence?

A Through the course of investigation, we noted that Mr. Chisolm, through his cell phone records had contacted numerous auto parts stores or junk yards looking for a seat for a Dodge Durango. Or it's -- while speaking with employees of LKQ, they recalled a transaction where a gentleman by the name of "Don" had called and inquired about a passenger side seat for a Dodge Durango.

Based on that and -- and it was my understanding that LKQ's policy, prior to them giving a quote, is they create a counter receipt for -- to document the request or inquiry whether or not they have the part.

Q Okay. In -- in your case notes -- I'm sorry. In your case notes and in other -- other case notes, it was reported that that receipt is the -- is the proof of a credit card being declined from LKQ Auto Parts on that date at that exact time which is 1:07 p.m.; is that correct?

A Yes, sir.

Q All right. And would you happen to notice the -- the credit card numbers in the right-hand corner above -- I

mean -- I'm sorry, below the time at 1:07?

A Yes, sir.

Q All right. And did y'all - did detectives investigate who this credit card belonged to?

A Yes, sir, we did.

Q All right. And the credit card did not belong to me; is that correct?

A That is correct.

Q All right. And this is also in reference to your knowledge at the time you issued the search warrant. The credit card did not belong to me for a purchase -- the credit card -- I'm sorry, was declined on 9/14/2007, of a -- and the credit card did not belong to me. You were aware of this; is that correct?

A Yes, sir. The credit card belonged to another individual --

Q Okay.

A -- who gave us statements.

Q Okay. You were aware that the credit card did not belong to me even though it was quoted with the name "Don." My name is Don-Survi Chisolm, but it was quoted with the name "Don."

The credit card did not belong to me. You were fully aware that no purchase took place on 9/14/2007 and it -- indeed it was not me who attempted to use the credit card

because the credit card is not in my name. There's -- there's no proof that I could have --

THE COURT: Are -- you asked him a question?

MR. CHISOLM: I'm sorry.

THE COURT: You can ask him the question. I -- I --

MR. CHISOLM: Yes.

THE COURT: But I -- I want you to --

MR. CHISOLM: Go on too long. I -- I -

THE COURT: Yes, sir.

MR. CHISOLM: -- apologize, Your Honor.

THE COURT: But I'm not trying to discourage you. But what I want you to do is just ask him --

MR. CHISOLM: Okay.

THE COURT: -- ask him the question. I think you want to make sure he didn't -- he didn't find anything that said that you purchased that; is that correct?

MR. CHISOLM: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. CHISOLM: In -- in -- in short.

Q Is there any proof that I purchased anything on September 14, 2007?

A The time the search -- search warrant was executed was based on -- to prove information in regards to the seat purchase as well as evidence of this crime.

Through the course of investigation, we led -- we were

led in the direction of LKQ Auto Parts based on statements from the credit card owner, the person in possession of it, giving you access to the numbers, through phone records that led us to LKQ, through employees of LKQ identifying you at that business.

Q Okay. Detective Giglio, you did not answer the question. And the things that you are pertaining [sic] to are your investigation after September 27, 2007.

What I'm asking is: When you issued the search warrant to a magistrate -- when you applied for the warrant to a magistrate on September 27, 2007, was there any definitive proof, as listed on the search warrant, that I purchased a seat from LKQ Auto Parts on 9/14/2007?

A Through ---

MR. HILTON: I'm going to object. That's already been answered. He just answered that same question.

THE COURT: Yeah. I think he -- I think he answered that earlier -

MR. CHISOLM: Okay. The answer's "no."

THE COURT: -- when -- when he said -- he said there was no final purchase receipt.

MR. CHISOLM: Okay.

THE COURT: I believe that's what he testified to earlier.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Is that correct?

A That's correct. Yes, Your Honor.

THE COURT: Okay.

Q And also, just to reiterate, no one -- no -- no -- you have no witnesses saying that I took possession or control of a seat from LKQ Auto Parts on 9/14/2007?

A I have no confirmed documentation that you took possession of that seat.

Q So that's a "no"?

A I have no confirmed receipts. If -- if that answers your question. I have no --

Q What ---

A -- final sales receipt available.

Q What I'm asking is: Do you have any witness statements, verbal or written, that I took possession of a seat from LKQ Auto Parts on 9/14/2007?

A No, sir.

Q Okay. Now, your -- your -- your case notes also note that witnesses ID'd myself and my wife at the time, Natalia Chisolm, as being at LKQ Auto Parts on September 14, 2007. Do you have -- did you provide the State with any photos, or lineups, any -- any signed photos, signed and dated by these witnesses, IDing me as being at LKQ Auto Parts on September 14, 2007?

A Any and all documents or evidence pertaining to this

case were -- was turned over to the Solicitor's Office. In regards to who presented those lineups to the employees at LKQ, there -- through the course of investigation, there was other detectives, other investigators who may have presented those.

Q Thank you.

MR. CHISOLM: Your Honor, I'd like to go on the record and say that I have received full discovery.

THE COURT: Uh-huh.

MR. CHISOLM: I also have -- I'm sorry. I also have the inventory of discovery. There is no -- there -- there are no pictures or any signed lineups IDing myself or my ex-wife at the time, Natalia Chisolm, being at LKQ Auto Parts on 9/14/2007 by any witnesses of LKQ -- any employees, I'm sorry, of LKQ Auto Parts.

THE COURT: Okay. Any other questions of this witness?

MR. CHISOLM: I have no -- no more questions for the witness, Your Honor.

THE COURT: All right.

MR. CHISOLM: Actually -- I'm -- I'm sorry, Your Honor. I do have them.

Q So just -- just to be sure. When you submitted the warrant to the magistrate stating that Detective Walsh and Detective Giglio met with employees of LKQ Auto Parts of

Charleston and obtained verbal and written statements that Don-Survi Chisolm purchased a passenger front seat of a Dodge Durango on 9/14/2007, that was incorrect?

A I believe I've already answered that, but ---

Q Yes. Thank you.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: All right. Mr. Hilton, any questions?

CROSS-EXAMINATION BY MR. HILTON:

Q Detective Giglio, I think the issue is, did y'all have knowledge that Mr. Chisolm purchased a seat from LKQ prior to the obtaining of the September 27 search warrant. All right. So let's -- let's talk about that.

(WHEREUPON, State's Exhibit No. 1 was marked and entered)

THE COURT: This would be State's 1?

MR. HILTON: Yes, sir.

THE COURT: Okay. And I know that -- know -- I know that you showed that to Mr. Chisolm.

MR. HILTON: I did, Your Honor.

THE COURT: Okay.

Q Detective Giglio, who was the other investigator -- lead investigator in the case with you?

A Detective Walsh.

Q Okay. And did she -- well, she interviewed witnesses in this case as well; right?

this is just cautionary, you have to be careful of any assertions that you would make in both your opening argument and possibly in your closing argument that would be taken as testimony. Do you understand that?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. All right, sir. It's my understanding that in picking the jury, we're going go with -- you will have 10 strikes.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. I'm planning -- yes, sir? You were getting ready to ask a question?

MR. CHISOLM: I'm sorry, Your Honor. I -- I requested to sequester the jury. I did that --

THE COURT: Okay.

MR. CHISOLM: -- last week. I forgot to --

THE COURT: Well, tell -- tell me about that then, please, sir.

MR. CHISOLM: -- mention that again. One second.

THE COURT: Tell me why you want to sequester the jury.

MR. CHISOLM: Yes, Your Honor. I believe the potential media coverage of my case will have a profound affect on the jury's ability to presume innocence. Any time I've been mentioned in news in the past, Your Honor, has been in an unfavorable light.

MR. HILTON: Potentially.

THE COURT: And have you -- have you given me a witness list?

MR. HILTON: I gave it to the court reporter.

THE COURT: Okay.

MR. HILTON: And I've given it to the defendant. I don't think I passed it up to the Court.

THE COURT: Yeah. If you'd -- if you wouldn't mind. Okay. All right.

Now, do you have any voir dire other than just general voir dire?

MR. HILTON: Just general voir dire and ask if they know anything about this case.

THE COURT: Right. Okay. All right.

MR. HILTON: And just to make sure that witness list I gave you does have 43 witnesses; is that correct?

THE COURT: Yeah. Great. All right.

Mr. Chisolm, do you -- you told me earlier you did not have any additional witnesses?

MR. CHISOLM: No, Your Honor.

THE COURT: Okay.

MR. CHISOLM: No, Your Honor. I do not.

THE COURT: And then do you have any voir dire?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. You want to hand that up to me?

(Court security officer hands a document to the Court)

MR. CHISOLM: If I ---

THE COURT: Have you -- have you shown it a copy to ---

MR. CHISOLM: No. I'm sorry.

THE COURT: Yeah.

MR. HILTON: I'll take a look at it.

MR. CHISOLM: Okay.

(Brief pause)

THE COURT: Okay. Any objection to any of these?

MR. HILTON: I -- I mean, I just glanced at them.

THE COURT: Oh. Well, here ---

MR. HILTON: Most of them, I think, are covered in -- in the general instruction.

THE COURT: Right.

MR. HILTON: There's some specific ones I don't have a problem with --

THE COURT: Okay.

MR. HILTON: -- any family member in law enforcement.

THE COURT: Okay.

MR. HILTON: Especially the bottom one: "Is anybody opposed to self representation."

THE COURT: Yeah.

MR. HILTON: I think those are appropriate.

THE COURT: Okay. All right, sir. All right.

when it comes out, just store it away in your mind, and you might get a few other pieces, and then you'll start seeing the picture. And I'm convinced at the end of this trial you will see the whole picture.

And I'm going to talk to you more at the end of the trial about the burden of proof and beyond a reasonable doubt. And keep in mind, beyond a reasonable doubt is not beyond a shadow of a doubt, not beyond any possible doubt. It's beyond a reasonable doubt. And I'll tell you, again, that beyond a reasonable doubt, we don't know -- there's very few things in life that we know with absolute certainty. Death is one of them. And the law doesn't require beyond a shadow of a doubt to convict somebody. It's not an impossible burden of proof. If that were the case, nobody would ever be convicted of anything.

At the end of this trial, you're going to see that bigger picture that that puzzle makes for you and I'm convinced that you'll be able to return a verdict of guilty. Hold Mr. Chisolm accountable for the murder of Craig Michael Canaday. Thank you.

THE COURT: Thank you, Mr. Hilton. Mr. Chisolm, do you wish to make an opening statement?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right, sir.

MR. CHISOLM: Good morning.

JURORS: Good morning.

MR. CHISOLM: First off, I would like to thank you all for being here, help me bring this case to a conclusion. I am Don-Survi Chisolm. I am the defendant, and as you know, I will be representing myself. And as to why I'm representing myself, the simplest answer I can give is, I have been searching for the truth -- I am searching for the truth and I have been for the past four years. And it was only upon representing myself that I was able to get this case brought to trial so that I may have the opportunity to clear my name.

With that said, one of the fundamental backbones of our legal system is the presumption of innocence, that we are all innocent until proven guilty beyond a reasonable doubt. It's on this foundation of innocence that I stand. I am confident that as this case is presented, my innocence, which is presumed, will be proven.

The facts will show that upon hearing of my friend's death, I was one of the first to make myself available to the family as well as detectives. And during detectives' two-month investigation, I, myself, and my co-defendant, David Leon White, made ourselves continually available to detectives even though we were the ones being accused.

We will also be showing that detectives preyed upon the limited eighth-grade education of my co-defendant,

David Leon White, in an attempt to force a false accusation or confession.

At the end of this two-month time period, detectives got their way. The question is: How? Do they use questionable tactics and falsify reports? Did one detective go above and beyond in a negative sense to close the case no matter the cost? Did he attempt to take two innocent lives along with the one innocent life that was already lost? I anticipate that together we will find the answers to these questions.

Craig Michael Canaday, also known as "Red," was my friend, just as David Leon White was my friend. And though he may attempt to take -- he may or may not attempt to take the stand to testify against me, I stand for all three of us.

I, myself, will not take the stand in an attempt to refute testimony that he may or may not give. I am very confident that as the facts are presented, his testimony, if -- if he chooses to testify, it will be proven to be false and forced.

All right. As I stand before you today, it is no longer what I intend to prove or the State intends to prove. As I stand before you, I am proving that I will fight for my life and I will fight for answers to be solved for my friends' lives, too, my friends, Craig

Michael Canaday and David Leon White.

I am proving that I will stand for the truth. Truth, something that evades us all -- evades us all very often. It is the truth -- the truth that so very often evades us all. It shimmers at the corner of our eye. And when we turn to capture its image, it is gone.

It is your mission to search for this light of truth and expose the deeds done in the dark. And with that said, I would like to thank you for listening to the truth as you have just heard it and as you will continue to hear it throughout this trial. I am confident at the conclusion of this case, I will not have to put on a defense. It will be proven that I did not commit the offense of murder. I did not do anything to my friend. The only thing I've done for the past four years is attempt to get this case heard and attempt to get questions answered the things that happened to me, my friend, and my friend David Leon White. Thank you.

THE COURT: Thank you, Mr. Chisolm. Mr. Hilton, are you ready to call your first witness?

MR. HILTON: We are, Your Honor.

THE COURT: All right, sir. You make call your first witness.

MR. AUSTIN: The State calls Tanya Platt.

THE COURT: Tanya Platt?

A I have -- I have no idea.
Q He was not there; is that correct?
A Yes. But what the -- what the recruiter said was with your criminal history in -- in your past ---
THE COURT: Okay.
A --- in the military.
THE COURT: Okay. Number 1, you can't say what somebody else said.
THE WITNESS: Okay.
THE COURT: Okay. Sorry.
MR. CHISOLM: Not -- not a problem.
THE COURT: Thank you.
Q I just wanted to confirm you had no way of checking into the fact that with me Sergeant Schumacher had planned, because he was not -- he was unavailable ---
A Correct.
Q --- to you all at the time.
A Correct.
Q Thank you.
THE COURT: All right. Thank you, sir. All right. You may step down. Appreciate it. All right.
Your next witness. State's next witness.
MR. CHISOLM: Your Honor, I have a matter of law.
THE COURT: Okay. You -- you can still step down. Okay.

(The witness exits the stand.)

THE COURT: Ladies and gentlemen, again, I'm going to have to ask you to step back into the jury room for a minute while I find out what's -- what I've got to discuss.

So again, if y'all will go back there again. You cannot discuss what you've heard so far. Okay. Thanks.

(The jury exits the courtroom at 11:02 a.m.)

MR. CHISOLM: One second, Your Honor.

THE COURT: Sure.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor --

THE COURT: Yes, sir.

MR. CHISOLM: -- the witness, Detective Bistromowitz --

THE COURT: Uh-huh.

MR. CHISOLM: -- just got on the stand and testified to my criminal history. And as you said in your opening statement to the jury, I'm not taking the stand, so my criminal history is not to come up.

So he just prejudiced me, Your Honor, and the -- the fact that I have a criminal history is not going to be able to get out of the jury's head. And I'm requesting a mistrial.

The -- the -- the prosecution should have -- sorry --

made sure that their witness knew not to introduce my criminal history in the trial. There's no way for me to -- to -- I'm -- I'm prejudiced. There's no way for me to get it out of the jury's head that I have a criminal history, and I'm not taking the stand, Your Honor.

THE COURT: But -- but you did ask a question.

MR. CHISOLM: I -- I never asked about my criminal history, Your Honor.

THE COURT: I understand. But you asked about getting into that MEPS program?

MR. CHISOLM: Yes. Into the military.

THE COURT: Okay.

MR. CHISOLM: And -- and that had absolutely nothing to do with my criminal history. It has to do with getting into the military period. That was actually talking about a positive aspect of -- of life, and he turned a positive into a negative for no apparent reason, Your Honor.

THE COURT: Okay. Do you have a criminal history?

MR. CHISOLM: What's that, Your Honor?

THE COURT: Do you have a criminal history, because I'm not aware -- I don't know.

MR. CHISOLM: I -- I -- I do not have a felony criminal history. But I do have -- I have issues on -- in my past, yes.

THE COURT: Okay. Okay. All right. So you're moving

for a mistrial because he -- he made the comment ---

MR. CHISOLM: Yes, he ---

THE COURT: --- about him -- clean up the criminal ---

MR. CHISOLM: Yes. He prejudiced me to the jury, Your Honor. He -- he's mentioned my criminal history and I'm -- I'm not taking the stand, Your Honor.

THE COURT: Okay. Okay. All right. Mr. Hilton, let me hear from you, please, sir.

MR. HILTON: Just briefly, Your Honor. I mean, the defendant did ask the question, and the question -- or at least the line of the questioning is: How do you know I wasn't going into the MEPS program?

And part of the reason how they knew was because of his criminal history. I mean, so when you ask a question, you get the answer that's coming to you. It's not a question the prosecution asked the witness. This came from the defendant. And the defendant can't ask a question, solicit an answer, and then ask for a mistrial. It just can't work that way.

There was no mention of what his criminal history was. There can certainly be -- certainly be a curative instruction indicating that they're to disregard that comment that he made about any criminal history.

The Court immediately stopped him when -- when that was said, and you even made reference to -- I think you

said, "First of all, you can't say what someone else said." You took attention away from the criminal history element, and you turned it into a hearsay element, which I felt was quite astute.

So for those reasons, Your Honor, I -- I -- I -- I would ask that you deny the defense motion for a mistrial.

THE COURT: All right.

MR. CHISOLM: Your Honor --

THE COURT: Mr. Chisolm, I think you want to tell me something else.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

MR. CHISOLM: Your Honor, it didn't get immediately stopped. He actually mentioned my criminal history twice, Your Honor. And the question I asked him -- I -- I didn't ask him about criminal history.

THE COURT: Uh-huh.

MR. CHISOLM: He was not responsive, Your Honor. He -- he offered that on his own.

THE COURT: All right. All right. Okay.

MR. CHISOLM: Your Honor, this is -- this is a very serious case. My -- my criminal history is -- is -- you know, it -- the -- if I have a criminal history, you know, that can severely prejudice me with -- with -- with tainting the -- the jury's minds.

THE COURT: Okay. Okay. All right. Mr. Chisolm, here -- here is what I'm going to do. Okay. He mentioned, as I recall it, something to the effect that one of the things they were trying to do was -- was either review criminal background or a comment like that. He did not go into any history of criminal behavior. He was -- he -- to me, he was talking about it as what -- at least, the way I took it, was that he was talking about it as just a procedure that you go through to get involved or get admitted into the military.

I think you want to tell me something. Yes, sir.

MR. CHISOLM: Yes. Your Honor, he -- he testified that they were trying to clean up my criminal history, and he said it twice: Clean up my criminal history.

If -- if -- if we need, Your Honor, we can ---

THE COURT: Yeah. I'm gonna -- I'm gonna check.

MR. CHISOLM: Yes, Your Honor.

THE COURT: (To the court reporter) You mind checking, Madam Court Reporter, to see what he -- what he said?

THE COURT REPORTER: It will take me a minute to stop and go back and ---

THE COURT: Okay. No problem. Yeah. We're going to be off the record for a while. If y'all want to take a break for about 10 minutes, y'all are welcome to do it.

Okay.

(Off the record at 11:08 a.m.)

(Back on the record at 11:47 a.m.)

MR. HILTON: Your Honor, Mr. Chisolm has requested that we print out a current copy of his criminal record. So we're doing that, so that can be done.

THE COURT: Okay.

(Mr. Hilton hands documents to Mr. Chisolm and to the Court.)

THE COURT: Okay. All right. Do you have -- I understand he wants to see that. I want to see what you got right now. You can -- you can mention that to me later --

MR. CHISOLM: Yes, Your Honor.

THE COURT: -- if -- if it's something different. I want to know what the criminal history was when this happened.

MR. CHISOLM: Yes, Your Honor.

(Brief pause.)

THE COURT: Can you -- can you see ---

MR. CHISOLM: I've already -- I've already viewed it, Your Honor.

THE COURT: You've already seen it?

MR. CHISOLM: Yes, sir.

THE COURT: That's the one that he gave you for your

report?

(No audible response.)

(Brief pause.)

(Mr. Hilton hands documents to the court clerk who then hands them to the Court.)

THE COURT: All right. And -- and -- okay. Thank you, sir.

(Brief pause as the Court reviews documents.)

THE COURT: All right. What is the -- he's got a sentencing date in here. Got a $250 fine and probation for -- and I'm trying to figure out ---

MR. CHISOLM: That's for ---

THE COURT: Mr. Chisolm, I wouldn't mind knowing what this is, if you -- if you don't mind telling me.

MR. CHISOLM: Possession of a firearm, Your Honor, which, you know, in light of the case, that -- that --

THE COURT: Well, I saw -- I saw there was a 1999 carrying a pistol without a license. That's the same ---

MR. CHISOLM: Yes. It should ---

THE COURT: That's what you got?

MR. CHISOLM: Yes. It should be for that, the $250 fine.

THE COURT: Okay. All right. And the only other thing was a military thing for wrongful use of cocaine; is that correct?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. There's -- Mr. Hilton, there's nothing else in his criminal history but this; is that correct?

MR. HILTON: Well, he does have his arrest from Berkeley County, for the murder that he's ---

THE COURT: No. I -- I understand. But I mean, convictions, that's it.

MR. HILTON: As far as I know.

THE COURT: Okay. Okay. Now, Mr. Chisolm, I want you to -- if -- if the only two convictions you have is a possession of -- carrying a weapon and -- and the wrongful use of cocaine was in the military.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. That was a military ---

MR. CHISOLM: UCMJ. Yes, Your Honor.

THE COURT: -- that reduced you from an E-4 to an E-1.

MR. CHISOLM: Yes, Your Honor.

THE COURT: And you got some extra duties and 45 days restrictions.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. Tell me why a curative instruction to the jury wouldn't -- I -- I couldn't make a curative instruction to the jury that there's nothing -- and you can talk it over with your counsel.

(Brief pause as Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, it's -- it's -- I -- I -- I don't think that will work because it's already -- the -- the fact that I have a criminal history is already put into their mind.

THE COURT: No. But if I -- I mean, if I clear it up, there's nothing -- it's nothing --

MR. CHISOLM: That -- that's -- that's a very great risk to me, Your Honor. As -- as I -- as I said, I'm already -- I'm under severe disadvantage as -- already, Your Honor, and -- and they clearly violated the law and introduced ---

THE COURT: Well ---

MR. CHISOLM: --- to introduce ---

(The Court and Mr. Chisolm speak simultaneously.)

THE COURT: Well ---

MR. CHISOLM: --- my criminal history, Your Honor.

THE COURT: Well, they -- they didn't really introduce it. I realize it was an unresponsive answer to ---

MR. CHISOLM: Definitely.

THE COURT: --- your question where they volunteered it. That bothers me ---

MR. CHISOLM: Yes, Your Honor.

THE COURT: --- to -- to -- to a degree.

MR. CHISOLM: That --

THE COURT: Tell me why you're at a -- at a disadvantage if I explain to the jury what it is.

MR. CHISOLM: Because as I said before, Your Honor, they -- that they -- it can tend to -- it could tend to weigh upon the decisions of my presumption of innocence. If they -- if my credibility ---

THE COURT: Okay.

MR. CHISOLM: --- could -- could possibly have already went out the window the second that they ---

THE COURT: You'll have that -- you -- I believe you told the jury you weren't testifying.

MR. CHISOLM: Yeah. I understand, Your Honor. But they -- they still looking. They -- they're looking at me standing here.

THE COURT: Okay.

MR. CHISOLM: That my presumption of innocence is -- is -- my presumption of innocence is in serious jeopardy by them already -- by them having knowledge that I have any type of criminal history.

Combined with the fact that, Your Honor -- I mean, in all honesty, this is a high-profile case. I know you instructed the jury not to watch the news or -- or not to, you know, read print. But as of last night, I was on every channel, Your Honor.

THE COURT: Tell me why you're -- well, never mind.

That's okay. Anything else you want to tell me.

MR. CHISOLM: No -- no -- no, Your Honor. Just really believe that that seriously would prejudice my presumption of innocence and my --

THE COURT: Okay.

MR. CHISOLM: -- and I ask for a mistrial.

THE COURT: All right. Mr. Hilton, anything else you want to tell me?

MR. HILTON: Just reiterate that he's the one that asked the question, and while I know the Court said that he was non-responsive --

THE COURT: Right.

MR. HILTON: -- it was part of their decision to how he knew -- how they knew he wasn't going back in the military because of his criminal record. And that was one of the things they discussed with either Sergeant Cook or Shoemaker [phonetic.}

THE COURT: Yeah. I understand that, but question -- my concern was the question, the general question was: Was Sergeant Shoemaker [phonetic] helping you get back in -- helping me get back into the military?

And a "yes" or "no" would have been fine, you know. That's my -- that's my concern. Okay.

MR. HILTON: Yes, sir. I -- I will add -- and there's going to be other testimony that's ---

THE COURT: Uh-huh.

MR. HILTON: --- forthcoming about cocaine use and so forth. I mean, that's *res geste* of the -- of the case and the murder that night.

THE COURT: Uh-huh.

MR. HILTON: And so coupled with that, I don't think that, you know, some -- just a brief mention, along with a curative instruction, can't -- you know, it -- that's not going to unduly prejudice the defendant.

THE COURT: Okay. All right. All right. Did you want to say anything else, Mr. ---

MR. CHISOLM: Yes. Yes, Your Honor. The -- the reason that they can't introduce my record is just -- plainly because it is prejudicial, Your Honor. And -- and --

THE COURT: Okay.

MR. CHISOLM: That's it.

THE COURT: Thank y'all. Okay. We'll be in -- I hate to do this, but y'all -- we'll be in recess for another few minutes while -- let me mull this over. Okay. Thanks.

(Off the record at 11:56 a.m.)

(Back on the record at 12:07 p.m.)

THE COURT: All right. Here's what -- here's what I'm going to do: I'm going to let the jury go to lunch while

-- if anybody wants to give me any -- any cases, they can. I'm doing some research on my own.

I'm going to tell the jury to be back here at 2. And -- and hopefully, by 1:30, I'm going to decide what we're going to do. Okay. All right. That's where we are. Thanks.

(To bailiff) Tell the jury to go to lunch. Be back here at 2.

THE BAILIFF: Yes, sir.

THE COURT: Okay. Thanks.

(Off the record at 12:07 p.m.)

(Back on the record at 1:53 p.m.)

THE COURT: All right. We are back on the record in the case of *State of South Carolina vs. Don-Survi Chisolm*. We -- we had a break for the Court to spend some time looking over case law and reviewing the transcript.

As the case -- the most recent testimony in the case, the officer -- detective on the stand was asked about whether or not a Sergeant Shoemaker [phonetic] was helping Mr. Chisolm get back in the military. The first time he was asked that question if he was helping that, he volunteered that he was trying to get his criminal history in order and get back into the military. That was part of -- of -- of his response. No objection was made at that time.

He was later asked was Sergeant Shoemaker [phonetic] working to get back -- get me back into the military. And at that time, he started -- instead of responding either "yes" or "no," he responded with (as read): "Your -- with your criminal history and your past ..." at which time I interrupted him. The defendant then made a motion for a mistrial.

Now, both questions just had to do with whether or not he was helping you get back into the military. The first time did not appear to be so bad to the Court because it was going along with all the other requirements. He mentioned drugs, testing, and some other things prior to that.

But the second time when he said, "With your criminal history and your past," it seems to put the defendant's character in question. This is a problem, particularly when the defendant had mentioned at the beginning of the case that he was not planning on testifying because he did not believe the State could prove its case.

I've looked over these cases and read them. This is not a situation where there is an implication that the defendant had a criminal record because they had fingerprints already on file. This was not a vague reference to a criminal record and was not for the purpose of establishing any element of the crime; however, in

saying this, I want to make sure that it is clear on the record that I do not believe that there was any misconduct or bad intent by the State's witness. I believe he was simply explaining what he was told by the recruiting sergeant, and he was not stopped prior to going into hear -- hearsay testimony, which was essentially hearsay testimony.

Unfortunately, it was unresponsive to the question. It was unnecessary, and it was prejudicial because even with a curative instruction from this Court, it still forces the defendant to strongly consider testifying and possibly giving -- give up his Fifth Amendment rights.

The defendant is entitled only to a fair trial, but not to a perfect trial. However, the unsolicited comments twice in this matter I believe affects the fairness. And so I am going to grant motion for a mistrial. Okay.

Now, having said that, I -- I've just checked this case. I don't think there's anything for trial next time. In September, you need to be ready to go to trial. I think it's -- September when?

CLERK OF COURT: The 12th.

THE COURT: Twelfth.

MR. HILTON: Thank you, Your Honor.

THE COURT: Okay.

MR. CHISOLM: Thank you, Your Honor, and I will be

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

2008-GS-18-0009

State of South Carolina,

Plaintiff,

v.

Donsurvi Chisolm,

Defendant.

Transcript of Record

September 13 - September 19, 2011
St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge, and a jury.

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

Russell Hilton, Esquire
Matt Austin, Esquire
Attorney for the State

Donsurvi Chisolm
Pro Se Defendant
John Loy, Esquire
Stand-by Counsel

Bonnie Kelly
Circuit Court Reporter

Transcript by:
Hilda M. Jordan, CVR-M
Circuit Court Reporter

marked for ID.)

(State's Exhibit No. 11, photo, was marked for ID.)

DEFENSE MOTION TO SUPPRESS HEARING:

THE COURT: Yes. I'm listening?

MR. CHISOLM: If I could have one second, Your Honor?

THE COURT: Yes, of course.

(Mr. Chisolm confers with Mr. Loy.)

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

THE COURT: Yes.

MR. CHISOLM: Your Honor, I move by way of motion to suppress all evidence that includes the issuance of a 9/27/07 search warrant for my 2007 Dodge Durango, silver in color, on the grounds that it was in violation of South Carolina Code of Laws 17-13-140, and my Fourth Amendment Constitutional Rights.

Briefly, what my argument is is, Your Honor, on 9/17/2007, detectives issued a valid search warrant and listed probable cause. I'm not going to read -- actually, could I hand this to you?

THE COURT: Absolutely.

(Document passed to the Court.)

THE COURT: Okay.

MR. CHISOLM: Yes, Your Honor --

COURT REPORTER: Could I get you to speak up for me just

a little bit.

MR. CHISOLM: I apologize.

THE COURT: You know what I was trying to do is you can get some help with that microphone. Isn't that microphone over there --

DEPUTY SMITH: Yes, ma'am.

MR. CHISOLM: I'll speak up.

THE COURT: I'm going to read it real quick. Give me just a second.

(Pause.)

THE COURT: You go right ahead. Yes, sir.

MR. CHISOLM: Yes, Your Honor. This warrant was issued, it was executed, no items of any evidentiary value were recovered from my vehicle. 10 days later, Your Honor, on 9/27/07, detectives issued, yet, another search warrant for my vehicle. Cited was the exact information that you just read, same probable cause. In an effort to refresh that same probable cause new information was added, Your Honor.

THE COURT: Okay.

MR. CHISOLM: It's my argument that the new information that was added was false.

THE COURT: Okay. Okay.

MR. CHISOLM: And I would pass this --

THE COURT: Yes. Pass that forward, too.

(Documents passed up.)

MR. HILTON: Your Honor, may I just briefly interject and --

THE COURT: Sure.

MR. HILTON: -- just add that I think the law of the case has been established. I mean, we've already heard this motion. It was hashed out with witness testimony. Mr. Chisolm has a full opportunity to be heard, and a decision was made on this exact motion. Under that -- with that in mind, we'd just object to this hearing, and that the law of the case has been established.

THE COURT: Okay.

MR. HILTON: With regard to this issue.

THE COURT: Okay.

MR. CHISOLM: Your Honor --

THE COURT: I don't have any way of knowing that until this moment, but let me finish reading and then I'll hear from both of you.

(Pause.)

THE COURT: Okay. All right. I'm listening. I've read both, now.

MR. CHISOLM: Continue on the motion or --

THE COURT: Well, you want to respond to that --

MR. CHISOLM: Yes.

THE COURT: Okay.

MR. CHISOLM: There is no transcript from the earlier

hearing, Your Honor. There is no written order. Only Mr. Hilton's representation as to what happened. This is a de novo. This is a new trial, a new hearing. Everything started over again, Your Honor, and I believe I should have a chance to continue my motion.

THE COURT: Okay. All right. And your position, obviously is that the law of the case is -- that the matter was decided by Judge Dickson, but there is no transcript?

MR. HILTON: There's a transcript. It hadn't been -- officially made part of this record. But, you know, I just say that if Judge Dickson had suppressed that -- I wouldn't be able to -- I wouldn't be able to get into that in this trial, just because there was a mistrial declared in the previous one. So on that -- kind of reverse line of thinking, I have to think, you know, what's good for the goose is good for the gander.

THE COURT: You know, y'all are presuming that I know -- which I know nothing. I mean, so your position is that he made this motion and the motion was denied?

MR. HILTON: That's correct.

MR. CHISOLM: Your Honor, I've been granted a new trial. Sort of like the grounds of appeal. It starts over. All ruling up to the trial judge the case was presented in front of. If this was presented in front of Judge Dickson, it would be understandable that he wouldn't want to hear the

same motion again, Your Honor. I'm granted a new trial.

THE COURT: I'm with you. Go ahead and let me hear from you?

MR. CHISOLM: It's my argument that the affiant willfully and knowingly with reckless disregard for the truth submitted false information on a affidavit for a warrant, and the warrant should therefore be deemed invalid, and it's fruits excluded from use in court under the exclusionary rule under the U.S. Constitution.

Briefly, the fact, Your Honor. On 9/26/07, the affiant and lead investigator, Det. Giglio, arrived at LKQ, also known as Livingston's Auto Parts to investigate the possible purchase of a front passenger seat for my Dodge Durango. At least three employees were interviewed. Detectives obtained statements and their investigation concluded for that day.

On 9/7/07, in a follow-up investigation, employees were interviewed once more. Information, as well as, statements were taken and with the combined knowledge it was concluded that the purchase could not be confirmed to have taken place on the day or days in question.

Later on that day on 9/27/07, the affiant applied for an obtained a search warrant citing information that I gave to you.

I'd like to call Det. Giglio to the stand to verify that the information was false.

THE COURT: Now, tell me where in the affidavit --

MR. CHISOLM: Oh, I'm sorry.

THE COURT: -- you say it's false. Tell me specifically what you're talking about?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

MR. CHISOLM: It's going to be the last two sentences, Your Honor.

THE COURT: Okay.

MR. CHISOLM: On 9/26/07, Det. Walsh and Det. Giglio, met with employees at LKQ Auto Parts of Charleston. Officers obtained verbal and written statements that Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on 9/14/07. This search warrant is requested to determine if any evidence of the crime is inside the above vehicle.

That exact portion, Your Honor, is false.

THE COURT: Which portion is false?

MR. CHISOLM: The part I just read, Your Honor, on 9/26/07, the detectives obtained verbal and written statements from employees that a purchase -- that I purchased a passenger seat on 9/14/07.

THE COURT: And what do you maintain is false; do you maintain. What portion specifically do you think is false? Do you think it's false that Det. Walsh and Det. Giglio met

with the employees at LKQ; is that what you think is false?

MR. CHISOLM: They met with the employees of LKQ --

THE COURT: Uh-huh.

MR. CHISOLM: -- it was never confirmed that a purchase took place on 9/14/2007.

THE COURT: I understand.

MR. CHISOLM: That portion is false. In essence, under oath telling the magistrate that they had information that a purchase took place on 9/14/07, and they had statements from witnesses and they didn't. They had statements from witnesses, Your Honor. No one attested to a purchase or not on 9/14/07. They did a two day investigation and it was confirmed twice that nothing was ever purchased on 9/14/07. It was actually nothing -- they -- it was concluded that nothing ever got purchased. There's no proof of purchase, no final transaction. They say they have written statements from employees attesting to a purchase, Your Honor. They have written statements attesting that a purchase didn't happen. They have the exact opposite.

THE COURT: But they also talk about verbal statements, they had verbal and written statements.

MR. CHISOLM: Yes. They took notes and everyone --

THE COURT: Okay.

MR. CHISOLM: -- even verbal -- the verbal statements were from the same people who wrote statements, Your Honor.

THE COURT: Okay.

MR. CHISOLM: They just took notes on it and they confirmed verbally and in writing that no purchase took place on 9/14/07. They confirmed that no purchase took place, period.

I think the state will stipulate to that.

MR. HILTON: And it's to stipulate there's no documentation that on the 26, the Sheriff's Office knew that came and purchased a seat. No, I will not stipulate to that.

MR. CHISOLM: Your Honor, I need to offer evidence.

COURT REPORTER: I'm sorry?

MR. CHISOLM: I need to offer evidence.

THE COURT: Where's the search warrant that was issued pursuant to the second affidavit? Do you have that, yeah?

MR. CHISOLM: The actual --

THE COURT: Because I've got one search warrant, that's dated -- this one is dated the 27. This is the second search warrant?

MR. CHISOLM: Yes.

THE COURT: Okay. Hold on.

(Pause.)

THE COURT: Okay. You know, just reviewing some of the case law, and as I understand it, it is your position that the information that was given to the magistrate on the 27

of September and sworn to in the affidavit was incorrect and known to the officers to be incorrect at the time that it made?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. And the way that you propose to show that is to what?

MR. CHISOLM: Witness testimony, Your Honor.

THE COURT: What witness?

MR. CHISOLM: Det. Giglio.

THE COURT: Detective -- well, who signed the affidavit; tell me who signed the affidavit?

MR. CHISOLM: Det. Giglio is the affiant, Your Honor.

THE COURT: I'm sorry?

MR. CHISOLM: Det. Giglio.

THE COURT: Oh, he's the affiant?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. And -- Yes, sir, Mr. Hilton?

MR. HILTON: I mean, other than my previous objection about the law of the case, if the Court wants to go forward, we're prepared to go forward.

THE COURT: I'm going to have to. I don't have an order, I don't have anything.

MR. HILTON: I understand.

THE COURT: I don't have the transcript, I don't have an order. I don't have anything.

MR. HILTON: I understand. We're prepared to go forward.

THE COURT: Very well. That will be what we will do.

All right.

MR. HILTON: It's my understanding Mr. Chisolm will be calling Det. Giglio?

THE COURT: It's his position that the search warrant issued on the 27 of September was improperly issued. So I think so.

Yes, sir?

MR. CHISOLM: I'd like to call to the stand, Det. Mike Giglio.

THE COURT: Okay.

THE CLERK: Please raise your right hand, state your full name for the record.

MR. GIGLIO: Michael J, as in John, Giglio.

THE CLERK: Spell your last name, please

MR. GIGLIO: G-I-g-l-I-o.

(WHEREUPON, Mike Giglio was sworn to tell the truth.)

THE CLERK: Thank you.

MIKE GIGLIO - DIRECT EXAMINATION

BY MR. CHISOLM:

Q Detective, how long have you been an officer of the law?

A I've been with the Sheriff's Office for about nine and a-half years.
Q Do you take pride in your job as an officer of the law?
A Of course.
Q Would you consider part of your job as an officer is to insure truthful conduct in society?
A Yes, sir.
Q Do you think those empowered to uphold the law should break the law?
A No, sir.
Q Is giving false information to an officer of the law a punishable crime?
A Yes, sir.
Q Did you apply for a warrant for my silver in color, 2005, Dodge Durango, on 9/27/07?
A Yes, sir. I met with Chief Magistrate Glenn Stephens, and obtained a search warrant for your 2005, Dodge Durango, registered to your sister, normally occupied by you.
Q Could you tell me yes or no, did you or not on 9?26/07, have any proof of a purchase or a final transaction for a front passenger seat for the 2005, Dodge Durango from LKQ Auto Parts, dated 9/14/07 or any date thereafter?
A We received a sales quote from the LKQ Auto Parts, as well as, written statement from a Mr. Richard Johns on 9/26/2007, who stated you came in to purchase the seat and

the next day you came back and paid cash.

MR. CHISOLM: Hold on one second.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Your answer is no, to the question?

A Can you repeat the question?

Q Do you have -- did you on 9/26/07, have any proof of a purchase or a final transaction for a front passenger seat for the 2005, Dodge Durango, from LKQ Auto Parts, dated 9/14/07 or any day thereafter?

A No, sir, I did not have the final transaction receipt, but that cumulative with the statements and the photograph we obtained on an earlier search warrant, it revealed the seat had been changed in your vehicle.

Q Did you, on 9/26/07, have statements -- this is verbal -- I mean, I'm sorry, not verbal -- plural statements from employees of LKQ Auto Parts confirming a purchase for a passenger seat took place on 9/14/07, and let me just be more specific. In this warrant you say you have verbal statements, plural, and written and verbal statements from employees?

A Yes, sir.

Q Did you have from employees?

A Yes, sir. Mr. Richard Johns and I believe George

Gallardo (sp) were the two, two of the employees we interviewed. Mr. Richard Johns did provide a written statement on 9/26/07.

Q And they attested to a purchase?

A Yes, and -- right here, if you'd like, I can read it to you.

Q George Gallardo statement on 9/26/2007. You have that statement; correct?

A Yes, sir.

Q Could you please read that statement for me?

A Sure. Statement of George Gallardo. He provided a home address of [redacted]. He is employed at LKQ Corporation. Provided the address at [redacted]. His occupation was a parts puller. State --

COURT REPORTER: I'm sorry. Parts --

A -- parts puller. Statement was given on September 26, 2007, in Charleston at 3:10 p.m. at 4550 Rivers Avenue. Says, I, George Gallardo, pulled a 2006 Dodge Durango, right front seat on Friday September 14, 2007 for a customer. He was then asked a series of questions on paper. Can you describe the customer? He was a black male, 20 to 30 years old. Hair was bald. Can you identify the person in the photograph. Answer: That was the man for the seat. Question: Can you tell me what items the customer was looking for? Answer: He want seat trim and seatbelt back

parts for the seat. To the question, did the customer tell you why he needed these parts? He need left seat top parts, and then it continues to Page 2. Do you want me to continue.

Q There's no need to continue. In that statement, he does not attest to a purchase, and he actually says on the fourth -- on the fourth question that the customer needed a driver's seat, not a passenger seat? There is no purchase in that; do you agree that he did not attest to a purchase in that statement?

A This statement does not attest to a purchase, not in the written statement, no, sir.

Q Didn't you just testify a second ago that you had -- that he had a written statement that said --

A No. I testified we received verbal and written statements from the employees at LKQ.

Q Now, George Gallardo has a second statement on 9/27/07?

A Yes, sir.

Q Would you please read that statement?

A I, George Gallardo, Jr., saw the female September 14, 2007 with the black male. I pulled the seat, Friday, 14, 2007 and I put the seat up front. I was off Saturday 15, 2007. Detective came and showed me the picture of the female and it was the same female on 9/14/2007.

Q Once again, he attest to no purchase?

A Yes, sir. That was taken by Det. Morgan. Yes, sir.
Q All right. Now, I'd like to jump forward for one second. As the lead investigator on this case, can you by way of a signed and dated photo or photo array, prove that an on-scene out of court identification photo was ever made in reference to me being at LKQ Auto Parts on the day in question?
A Can you clarify that for me?
Q Do you have -- did you do a photo line-up. Do you have a signed and dated photo line-up to attest to be being there?
A I have the individual photo that was shown to the employees at LkQ that is signed and dated.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q Have you ever done a photo line-up?
A Yes, sir, I have.
Q Could you tell me why a photo line-up are used?
A Photo line-ups are used -- I'm assuming your question -- photo line-ups are used to identify a person involved in a criminal offense or activity. At the time, we were showing -- showed a photo of you to the employees of LKQ, to identify if you were the person who came in to purchase a seat, not suspect in a criminal activity at LKQ Auto Parts.
Q But the suspect in a criminal activity all the same?

A Yes, sir. You were the person who came to acquire a passenger seat for a Dodge Durango. That was the only reason that the photo was shown.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

MR. CHISOLM: In regards to this photo, Your Honor, I've never received this photo, and when we were in the last trial, I asked that same question and there wasn't a photo. My question is where did they get the photo from like within the past two weeks, three weeks? Your Honor, I have a full inventory and I was never given this picture, and we went through this whole process, there was no photo available, and three weeks later, now we have a photo available.

THE COURT: You mean the photo that was shown to the folks at Livingston's?

MR. CHISOLM: And signed and dated.

THE COURT: You've never seen the photo?

MR. CHISOLM: I have a full inventory. It is not in there.

THE COURT: Okay.

MR. CHISOLM: I asked the same question at the last hearing.

THE COURT: Uh-huh.

MR. CHISOLM: They didn't have a photo.

THE COURT: Okay. Okay, I'll tell you again, just like

-- Mr. Hilton, I just got here.

MR. CHISOLM: Sorry.

THE COURT: And if I don't have the transcript and I don't know, I don't know.

MR. CHISOLM: Right.

THE COURT: But -- would you like to see the photo. Would you like for me to get the photo so you can see what they're talking about?

MR. CHISOLM: Yes.

THE COURT: Sure. Absolutely. George, Major -- Ernest. That's fine. Y'all come get the photo.

MR. GIGLIO: It's in the case file. Solicitor has it also.

THE COURT: Okay. And what we'll do is we'll mark it for identification purposes and then we'll show it to Mr. Chisolm.

COURT REPORTER: Is it a Defense Exhibit or State's Exhibit or a Court's Exhibit?

THE COURT: It's a state's exhibit because it's in support of their --

COURT REPORTER: Okay. This will be State's 12. We've pre-marked one through 11. Unless it's in that one through 11, Mr. Hilton?

MR. HILTON: No.

COURT REPORTER: So this will be State's 12, then.

Okay. ID only.

(State's Exhibit No. 12, photo, was marked for ID.)

THE COURT: Got it?

COURT REPORTER: Yes, ma'am.

THE COURT: Great. Okay.

Is that it; that's the photo?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Thank you so much, Mr. Taylor.

All right. Yes, sir.

MR. CHISOLM: I'd just like to know, on that picture, Your Honor, when they describe me -- describe the black male in their statements they only describe a 20 to 30 year old bald headed male. They showed them a picture of a black male standing directly next to a Dodge Durango. That's prejudicial, kind of insinuates exactly what they wanted the people to do.

THE COURT: Okay.

BY MR. CHISOLM:

Q Det. Giglio, on the statement -- we've made it clear that Mr. Gallardo did not attest to a purchase; correct?

A Not on the written statement, no, sir.

Q Did he attest to it verbally?

A He -- during the course of the interview, we spoke with him, as well as, Mr. Johns at the LKQ Auto Parts. Mr.

Gallardo, I recall he -- his duties at LKQ was parts puller. So he didn't handle the financial transactions, so he couldn't give us any more information in that regard. So he did not attest to the purchase?

A Correct.

Q Okay. Now, Mr. Johns, is it correct that his statement says a customer came in on 9/14/07 at 1:07 p.m. He needed a 2006 Durango right seat, gray. His dad called in with credit card to pay for seat. Credit card declined. So customer came back the next day and paid cash.

A Yes, sir, that's what's in his statement.

Q So we're confirming in Mr. Johns's initial statement, he confirmed that no purchase took place on 9/14/07 and he said he believed that on 9/15/07, the customer came back and paid cash; yes?

A Yes.

Q Okay. On Mr. Johns's second statement, do you recall Mr. Johns clarifying that the customer came back on 9/15/07, and the customer did not pay cash, that nothing was actually purchased?

A Yes, sir. This statement was taken by Det. Morgan and Det. Bistromowitz. I didn't interview Mr. Johns on that date.

Q Okay. And as a lead investigator, do you routinely receive updates from those detectives who are assigned to

work with you on a case?
A Yes, sir. As time permits and scheduling permits, we do go over details and statements, and things of that nature. If I recall, on the 27th, myself and Det. Walsh were canvassing the area, local dump sites, landfills, trying to locate the seat they removed from your vehicle.
Q Did Det. Bistromowitz accompany you to obtain the warrant on 9/27/07?
A Yes, sir, he did when we met with Chief Magistrate Glenn Justis -- I'm sorry, Glenn Stephens.
Q Det. Bistromowitz is the same one that got the statements and who was at LKQ Auto Parts with Det. Morgan?
A Yes, sir. He and Det. Morgan were at LKQ.
Q And as the lead investigator, you did not get updated before you went to --
A Addressing how you came into possession of the seat, whether it was a thief or you legally acquired it, we then received a final transaction receipt from the LKQ.
MR. CHISOLM: One second.
(Mr. Chisolm confers with Mr. Loy.)
MR. CHISOLM: All right.
BY MR. CHISOLM:
Q What you just said, probably two questions ago, you didn't get updated by the detectives before you went to get the search warrant. What you're saying now is that there

was an issue of a possible thief. That was in the statement that came from the detectives on the second date. So did you or did you not receive an update?

A Yes, sir, we did. We discussed details as they were unfolding.

Q Okay, and on the second -- on the second statement, Mr. Johns confirmed that no purchase took place on 9/14 or 9/15; correct?

A On the second statement the question was asked did he pay for it to Tracy, the answer was no. End of statement.

Q So no purchase took place on either day?

A (No response.)

Q Can you please tell me yes or no?

A No -- we weren't able to confirm a lawful purchase had occurred.

Q So in both statements, the culmination of the 48 hour investigation and all the statements that you have, no one attested to a purchase for final transaction taking place at LKQ Auto Parts by me; is that correct?

A No one attested to a final transaction, however, Mr. Richard Johns through verbal and written statements --

MR. CHISOLM: Your Honor, he's being no-responsive. He's not answering the question, Your Honor. I'm clearly asking if a purchase was confirmed. He's going around the question as much as possible.

THE COURT: I guess I don't understand what you mean by a final purchase. What do you mean by final purchase. Help me out?

MR. CHISOLM: They have a receipt if a cash transaction took place, if any type of -- any type of transaction took place.

THE COURT: Okay. Your question to this witness is: Did he have information that any transaction had occurred between you and Livingston, LB-- whatever, LBS.(sic) Is that the question?

MR. CHISOLM: Did anyone claim they sold me anything? Is the question. Did anyone say they sold me anything?

THE COURT: Okay. When?

MR. CHISOLM: On 9/14 and ever. I'm sorry, Your Honor.

A I'll try to clarify this as best I can. The employees at LKQ identified you as the person looking to purchase a seat. They pulled a part for you. We never obtained a final sales transaction receipt.

BY MR. CHISOLM:

Q Is that a no?

A What is the question, again?

Q Did anyone claim that they sold me anything?

A Once again, the first statement from Richard Johns saying yes, you paid for it in cash, and then he contradicts himself later on when he wasn't able to find a final sales

receipt.

Q Okay, but in the second statement it was not a question of could he find a final sales receipt, he clearly said no purchase took place.

A (No response.)

MR. CHISOLM: I should have the second statement marked as a receipt. Could I please see a copy?

THE COURT: Now the one that I have is not marked as an exhibit.

MR. CHISOLM: The court's --

THE COURT: Do you want to have it marked as an exhibit?

MR. CHISOLM: I'm sorry. It should be in the Court's file.

THE COURT: Again, I just got here, guys.

(Document passed to Mr. Chisolm.)

BY MR. CHISOLM:

Q When Mr. Johns was asked about the credit card purchase or attempted purchase on 9/14/07, did he confirm that the card was declined?

A Yes, sir, he did.

Q Okay. When Mr. Johns was asked, did he, as in the person who was there, pay for the seat to Tracy, was his answer yes or no?

A It was no.

Q Okay. No purchase took place?

MR. HILTON: Objection, Your Honor, that's been asked and answered three or four times.

MR. CHISOLM: Actually, no. He's went around it every time, Mr. Hilton.

THE COURT: That's okay. You don't address Mr. Hilton, you address me.

MR. CHISOLM: Oh, I'm sorry.

THE COURT: That's all right.

MR. CHISOLM: I'm sorry.

THE COURT: Okay.

BY MR. CHISOLM:

Q Was it your intent on 9/27/07, to get this warrant signed by a judge so you can execute it on my 2005 Dodge Durango?

A Was it my intent?

Q Yes. Was it your intent to get the warrant signed?

A Yes.

Q Did you in good faith correct any error on the affidavit by submitting an additional affidavit?

A Submitting -- No, I did not submit an additional affidavit.

Q You did not attempt to correct any errors on this affidavit?

A No, sir, I did not submit any additional affidavit.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Okay. So we've confirmed that no purchase took place, no one attested, no employee from LKQ attested to a purchase, that no purchase actually took place, it was your intent to get the search warrant signed and that you did not attempt to correct any errors on that affidavit knowing that the affidavit was incorrect?

A I didn't know the affidavit was incorrect, if that's your position, sir.

Q You read, you talked to the employees; yes?

A Yes, sir, I did on September 26.

Q Okay, and you were aware of the possible purchase on 9/15; yes?

A Correct.

Q And you cited on the search warrant that the purchase took place on 9/14; correct?

A I'd have to read the search warrant.

(Document passed to witness.)

A Yes, sir. I cited in the warrant 9/14.

Q Okay. You knew the purchase was attempted on 9/15. You signed 9/14 on the search warrant. You made no attempts to correct the search warrant.

A No, sir, I made no attempts to correct the search warrant.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Okay. I'm concerned about the jury. I'm concerned about the fact that it's 4:20. We're not going to be able to begin today, and you may or may not have questions. I'm going to let the jury go, and I'm going to do that now. So yo come on down and you'll have to come back.

Let me have the jury, please, Mr. Taylor, because I'm going to dismiss them for the day.

Thank you.

(Jury in at 4:20 p.m.)

THE COURT: All right. Ladies and gentlemen, I have brought you out at this juncture, because there is a matter that I must attend to and it's taken me longer than I anticipated that it would. I'm not going to hold you in your jury room any longer. I'm going to send home for this evening.

Now, note pads that were in your seat, just leave them in your seat. We'll address those first thing in the morning.

Ladies and gentlemen, we're going to begin in the morning at 9:00 o'clock, at 9:00 o'clock. You will go home this evening. There's going to be somebody who is curious about what you have been up to, so we need to talk for just a moment.

Ladies and gentlemen, I'm going to give you this instruction. I'm going to tell you do not discuss this

matter or allow anyone to discuss it with you, and you're going to be going, what? You haven't even started, we've met each other in the jury room, but we haven't started. Well, I read you some of the allegations from the indictment. I've introduced you to some folks. So ladies and gentlemen, you have some information because you have that small bit of information. I must give you the instruction, do not discuss this matter or allow anyone to discuss it with you. Now -- or anyone that has anything to do with it.

Now, do not do any Columbo, do not do any investigation. Internet is around us. Information bombards us all the time with technology. You must not access that technology. You must receive all of the information from which you will make up your mind here in court while court is in session. So don't blog, don't tweet, don't facebook. Don't go to the internet, don't search. Don't go to the internet or any social networking for any purpose with regards to this case. Don't blog, don't chat with anyone about this matter. Again, you must receive all of the information from which you'll make up your mind here in the court while court is in session.

When you go home it is perfectly fine to say that you did go to St. George, that you showed up for your jury service and yes you've been selected to serve on a jury.

The next thing that folks seen to want to know is, well, is it a civil matter as opposed to a criminal matter. It's perfectly fine to say that the jury that you are sitting on is a matter out of General Sessions or criminal court. Nothing wrong with that. But, beyond that, you must not discuss this matter or allow anyone to discuss it with you. Don't you take any upset. Be sure you put it on the judge. Tell whomever is asking you, just say the judge told you you cannot talk about this matter.

You will be able to discuss this case when you have been discharged from your jury service by me. We will talk about it specifically. There will be no question in your mind when that time has come, but before that time has come you must not discuss this matter with anyone or allow anyone to discuss it with you.

Now, do not read anything, listen to anything about this matter, and that is, of course, is radio, the televison, the newspaper, or the internet. So please be mindful of that, as well.

Anybody working at night? Anybody go in at what -- 3:00 and get off at 11:00 or go in at 7:00 and get off at 7:00. Everybody works in the daylight hours? Yes. Great. Good.

Very well, I was going to intercede on your behalf if you worked in the evenings because I didn't want you to do

that. I want you to rest because I need you rested in the morning.

Ladies and gentlemen, those of you who are breakfast eaters, let me notify you that if you are a Wheaties eater, you better eat a half-a-bowl in the morning, because I know Ms. Salisbury is going to have something here for you in the morning, and I don't want you overeating on your breakfast. I don't know what she's going to have, but I know she's going to have something here for you. So those of you who want to count your calories, I want you to be aware of that, also in the morning.

I think that Ms. Salisbury is going to want you to gather in the morning down in the jury assembly room -- yes, George -- George is giving me the yes. And then she will bring you up, and we will begin as soon as you all arrive at 9:00 o'clock or as soon as we can.

Have a very pleasant evening. Leave your notebooks in your seat, and please remember do not discuss this matter or allow anyone to discuss it with you.

See you in the morning.

(Jury out for the evening at 4:25 p.m.)

THE COURT: Yes, Mr. Hilton?

MR. HILTON: Thank Your Honor.

THE COURT: Sure.

MIKE GIGLIO - CROSS-EXAMINATION

BY MR. HILTON:

Q Det. Giglio, you said in that search warrant affidavit that you submitted to the magistrate's court for the signature of this warrant, you said you obtained verbal and written statements that Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango. That was the original thought after talking to Mr. Johns and Mr. Gallardo, right?

A Correct.

Q And then as it turned out, there may have been some confusion as to whether he purchased the seat or whether he stole it; is that true?

A That is correct.

MR. CHISOLM: Objection, Your Honor, leading the witness.

MR. HILTON: It's cross-examination.

THE COURT: It is -- it is cross-examination. But I'll ask that you not lead.

MR. CHISOLM: Thank you.

BY MR. HILTON:

Q Let me show what's been marked --

MR. HILTON: Do I need to remark this? In this case, can we use the --

THE COURT: I think you can. Yes.

MR. HILTON: Thank you.

COURT REPORTER: That's State's 13. I'll put it over the top so we won't get confused. Okay. What is it? What is it?

MR. HILTON: That's a sales receipt.

COURT REPORTER: Oh, sales receipt. Thank you.

(State's Exhibit No. 13, sales receipt, was marked for ID.)

BY MR. HILTON:

Q Let me show you what's been marked as State's Exhibit 13 for purposes of this hearing and ask you if you recognize that?

A Yes, sir. It's a copy of a parts invoice for a 2006 Dodge Durango seat.

Q And was that part of the information that you had when you obtained the search warrant?

A Yes, sir.

MR. HILTON: Your Honor, at this time, I'd off this as State's Exhibit No. 13, into evidence, for this hearing.

THE COURT: And if you will show it, please, to Mr. Chisolm.

(Document passed to Mr. Chisolm.)

THE COURT: Any objection?

MR. CHISOLM: No objection.

THE COURT: Very well.

BY MR. HILTON:

Q Now, Mr. Johns's statement, do you have a copy of that handy with you? That's the statement given on the 26?

A Yes, sir, I do.

Q Okay. Can you publish to the Court that first statement prior to getting to the question and answer?

A Yes, sir. Statement of Richard Johns. Home address [redacted]. His employer is LKQ Auto. His occupation was manager. The statement was given September 26, 2007. Says: Customer came in at 9/14/07, 1:07 p.m. Needed 2006 Dodge Durango right seat, gray. Daddy called in with credit card to pay for front seat. Credit card declined, so customer came back next day and paid cash.

Q So he originally came in on the 14, right?

A Correct.

Q And did y'all learn it was the next day that he actually either completed the purchase or stole the seat?

A Correct.

Q Now, let me show you State's Exhibit No. 13, just one more time and ask you if you can publish the date at the top of that?

A September 14, 2007 at 1:07 p.m.

Q The statement of Mr. Johns, what's been marked as State's Exhibit No. 1, has -- in State's Exhibit 13, is that the information you relied on to obtain the search warrant?

A That along with photographs obtained from the first --

this interview on the 17 by Lt. Asbell.
Q But as far as the statement in the affidavit about purchasing a seat, are those the documents that you relied on?
A Yes, sir.
Q Did y'all make up that statement about, he purchased a seat?
A No, sir. This was a voluntarily written statement by Mr. Johns.
Q And the statement and the affidavit, did y'all just make that up?
A No, sir.
MR. HILTON: No further questions, Your Honor.
THE COURT: All right. Yes, sir?

MIKE GIGLIO - REDIRECT EXAMINATION

BY MR. CHISOLM:
Q Detective, you said you relied upon the 9/26/07 statement, correct?
A Yes.
Q To get the warrant. Okay. And it is correct that this statement says that on 9/14/07, no purchase took place; correct?
A Correct.
Q And you relied upon this information and, yet, still on the warrant you stated that the purchase took place on

9/14/07?
A Correct. That is a clerical error on my part.
Q Okay.
A 9/14/07 should be 9/15.
Q Did you -- did you attempt to correct your error by additional affidavit?
A No, sir, I didn't.
Q And you knew that you made an error?
A No, sir. No, sir. It wasn't until you pointed this part out to me. I looked at this document dozens of times.
Q Okay. Now, additional question. You never noticed that, you said; yes?
A Correct.
Q Now, that warrant was issued. You said you were updated at a later date, correct?
A Yes, sir.
Q And on a later day it was confirmed that no purchase ever took place; correct?
A No, sir. We've never been able to confirm or deny whether the purchase occurred.
Q You said -- the question was -- I mean, what was at issue was, y'all didn't know if I took the seat or purchased the seat. You have no one at LKQ Auto Parts that says the seat was purchased; correct?
A I have no final sales counter transaction receipt;

correct.

Q Okay. Do you have any statements from anyone at LKQ Auto Parts of an eye-witness account of me taking physical possession and control of a car seat?

A No, sir.

Q So it was never confirmed by eye-witness testimony or verbal that I -- that I actually acquired this seat?

A No, sir. The only statement in that regard was in response to how you came into the business. You were standing by the seat and a moment later you and the seat were both gone.

Q Okay. So in the end, after being updated, you were aware that I did not purchase the seat and no one could attest to me taking the seat; yes? But you still believe that I had the seat?

A Yes, sir, based on the photographs and also --

Q Okay. And you did not make any attempt to correct the affidavit?

A Correct.

MR. CHISOLM: No further questions.

THE COURT: Very well. All right.

Thank you. You can come down.

Anyone else you wish to --

MR. CHISOLM: No, Your Honor.

THE COURT: Okay. Very well.

MR. CHISOLM: I'd like to cite State verses Sachs. It's going to be spelled, S-a-c-h-s. In this case, as well as, other South Carolina court cases, Your Honor, the appropriate test in regards to false information on an affidavit is cited as -- is held as -- I'm sorry -- did the officer or other government official in such capacity intentionally, recklessly, or in bad faith recite facts he knew or should have known to be erroneous without correcting the error by additional affidavit or affirmation to obtain the issuance of a warrant.

The detective has clearly testified that he knew this information was incorrect. He made no attempts to correct the information, Your Honor. The information was false.

This is the exact type of conduct, the exact type of conduct displayed in this case. Your Honor, this is the exact type of conduct displayed in this case that the exclusionary rule was made to determine.

The detectives previously obtained a warrant to search the Dodge Durango on September 17, 2007, and used the false information to refresh the probable cause that was previously cited on that warrant. This was a blatant act of mis-conduct that was well throughout as proven by the 48 hours they had to think about the information that was obtained and confirmed that the time period -- obtained and confirmed over that time period and still the information to

a magistrate -- and still provided false information to a magistrate with absolutely no intention of showing good faith effort to correct it. This information was sworn to and taken by the magistrate as true. I'm sure if he knew it was a lie the warrant would never have been issued, and since we know as much now, I ask for this warrant to be suppressed.

THE COURT: Very well. Anything further in this regard?

MR. CHISOLM: Nothing further, Your Honor. We plan to give you the case cites.

THE COURT: Got it.

MR. CHISOLM: Okay.

THE COURT: Thank you so much.

All right. All right. I do not find that the affidavit was given intentionally or in bad faith or recklessly, and the law is very clear that I am to take the application for a search warrant, the affidavit, in support thereof and to consider the circumstances existing, and as I review the affidavit, I believe that there was probable cause established, and I think there was a basis based upon the interviews at LBS (sic) for that. And I do not believe that the characterization by these officers as a purchase, instead of saying, well, either purchase or thief, is really of no moment. I think that what the officers were intending to tell the magistrate was that based on their interviews

they had probable cause to go -- and I don't know if it was re-examination of the vehicle at this point, but certainly that was information that had come to them. Apparently, there was lack of clarity about whether the seat had been purchased. Apparently, there was some attempt with a credit card, and there certainly is a lack of clarity about that, but what there isn't a lack of clarity about or that certainly the investigation had led the officers to LBS (sic) and that based upon their interviews with the need to re-examine the vehicle again.

So taking the matter in its totality, I find that probable cause did exist. I don't find that to be reckless as establish and enumerated in the Sachs case or existent here, and would respectfully deny your motion and your exception thereto.

Do we have any additional motions? First from the state?

MR. HILTON: Not from the state, Your Honor.

THE COURT: All right. And from Mr. Chisolm?

MR. CHISOLM: Yes, Your Honor. The police claim that I was doing cocaine and it was a separate uncharged crime.

THE COURT: Okay.

MR. CHISOLM: Which is not relevant and prejudicial and I move to suppress any such statement.

THE COURT: Tell me what -- tell me what you're telling

me?

MR. CHISOLM: In the last hearing, Your Honor, when they were on the stand they said they received information that I was riding around doing cocaine. I don't want the jury to hear that.

THE COURT: And -- well, let me just -- I -- let me say this. I tend to rarely made evidentiary rulings in a vacuum, and while I appreciate and like to know that that is a potential issue, at this point, I'm not inclined to rule on that motion. Sometimes, sometimes, even though there can be additional criminal activity that is attendant to the indicted activity, sometimes it becomes so integral that it cannot be excluded, it ought not be excluded. It makes it impossible to tell the jury the context of what occurred, because you extricate it. I don't know that that's at all the circumstance here. I will ask this, that prior to that testimony being given I've given an opportunity to rule on it, since there's been an objection at this point.

Mr. Hilton?

MR. HILTON: I mean, just putting it in a little context --

THE COURT: Okay.

MR. HILTON: -- I mean, the co-defendant will testify that they were riding around doing cocaine. They were also looking for somebody to rob. I mean, that's part of the res

gestae -- that's part of the surroundings as this murder occurred. So no, I don't intent to get into something that's remote in time or that was somehow unconnected to this offense, but I think it's essential to get that part of the story out through the co-defendant, and the defendant admitted that to a statement to police. So, I mean, that would be coming out in that, as well.

THE COURT: So in other words, it wasn't -- your position is that it wasn't gratuitous that law enforcement just said, oh, and by the way, he does cocaine. That it was -- that it is part of the story that would be told by witnesses?

MR. HILTON: Absolutely. This is part of the res gestae of the case.

THE COURT: Okay. All right. Mr. Chisolm, what about that?

MR. CHISOLM: Once second, Your Honor.

THE COURT: All right.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, that is more prejudicial than probative. The mentioning of the cocaine or the use of cocaine.

THE COURT: The use of cocaine?

MR. CHISOLM: Yes, it would be more prejudicial than --

THE COURT: Okay. I understand.

MR. CHISOLM: Okay.

THE COURT: Here -- and the only reason I'm concerned about it at all is because you want to know where you are because you want to argue that in your open -- you want to make that statement in your opening statement; this is what occurred, this is what the testimony will show. Right?

MR. HILTON: I mean, I can strike it out of my opening, that's not the crux of it. The witnesses will testify and I don't want to -- I mean, I hate to limit their telling of the story of what happened just by excluding the cocaine. Like I say, that's a major part of it. That's the whole reason that he and David White were together that night.

THE COURT: Well, I got some sense of that just looking at the affidavit that apparently -- somebody made a statement that they were riding around and I think somebody says, doing narcotics. I don't know if they identified what they were doing, but at some point, they're picking up and dropping off people. I picked that up just from the affidavit Mr. Chisolm gave to me. And then at some point in the course of this evening, this shooting occurred.

It seems to me, Mr. Chisolm, that it's part of the res gestae. It seems to me that it's coming in. What I don't want to have happen is I certainly don't want law enforcement in the telling, if you will, telling the story of what occurred over the course of this time, you know, I

don't want it coming in gratuitously like, you know, that Mr. Chisolm is a person known in the community to do cocaine. I certainly don't anything like that coming out, and I don't want to -- law enforcement saying, gee whiz, we saw him before doing cocaine or a week afterward. I don't want any of that. But when it comes to the events that occurred, and again, I'm simply looking at the affidavit it looks as though people are together in the vehicle and there appears to be statements that they were doing drugs. I gather that's the narcotic, the cocaine. Somebody says --

MR. HILTON: That's correct.

THE COURT: Doesn't say narcotic, but says cocaine and over the course of the evening these things happened, and this gentleman was shot. Yes?

MR. HILTON: That's correct.

THE COURT: That's just going -- res gestae. That's just going to be part of the story. All right.

And understanding your objection to it, I would not exclude that. I think it's a part of -- and I think it's integral to what occurred on that evening. So I would not exclude that.

MR. CHISOLM: Yes, Your Honor.

THE COURT: And noting your exception thereto.

MR. CHISOLM: Yes, ma'am.

THE COURT: Very well. Any other -- Mr. Chisolm, can you

COURT REPORTER: J-o-h-n-s?

MR. HILTON: Uh-huh. (Affirmative response.)

(State's Exhibit No. 14, first statement of Mr. Johns, was marked and entered for purposes of Motion to Suppress Hearing only.)

COURT REPORTER: Okay. What else? This is going to be -- What is it?

MR. HILTON: Second statement.

COURT REPORTER: Second statement of Mr. Johns. The first one is the first statement?

MR. HILTON: Uh-huh. (Affirmative response.)

COURT REPORTER: State's 15 is the second statement of Richard Johns. Okay.

(State's Exhibit No. 15, second statement of Mr. Johns was marked and entered for purposes of Motion to Suppress Hearing only.)

COURT REPORTER: Okay.

THE COURT: Mr. Hilton, in the morning, are you going to need anyone other than Mr. Chisolm?

MR. HILTON: Not from the jail.

THE COURT: Okay.

COURT REPORTER: Okay, and now what else?

MR. HILTON: Uh --

COURT REPORTER: State's 16?

MR. HILTON: Yeah, that's the search warrant.

COURT REPORTER: Search warrant. This one?

MR. HILTON: Uh-huh. (Affirmative response.)

COURT REPORTER: How many pages is that?

MR. HILTON: Four.

COURT REPORTER: Four.

(State's Exhibit No. 16, search warrant was marked and entered for purposes of Motion to Suppress Hearing only.)

THE COURT: All right. Now, I have questions. The clerk's file from the first file with the exhibit sheet. What are the exhibits that are listed on the clerk's file in the first trial; what you got?

(Document passed to the Court.)

THE COURT: Thank you. This doesn't make any sense to me. It says photo.

COURT REPORTER: Yes.

THE COURT: Squigglies?

COURT REPORTER: Yes. All those are photos. In other words all the way down to where --

THE COURT: All right. In the motion hearing and the date is 8/22 to 8/22 and it's plaintiff's exhibit, one page statement doc. Defendant's exhibit, receipt, doc, 2 pg doc. Court's Exhibit, search warrant doc 4 pages.

All right. And then we've got Plaintiff's Exhibits 8/22/11 through 8/23/11 and we've got photos -- ID, for ID -

verdict.

Now, in order to preserve everyone's rights it's necessary that I ask whether there are any objections by the state?

MR. HILTON: None from the state.

THE COURT: And from the defense?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well.

Ladies and gentlemen, I ask at this time that you please draw close as we listen to the opening statements.

Mr. Hilton.

MR. HILTON: Thank you, ma'am.

THE COURT: Yes. Yes.

MR. HILTON: Ladies and gentlemen of the jury, good morning.

Four years ago today, September 13, 2007, in the early morning hours between 3:00, 4:00 o'clock , the victim in this case, Craig Michael Canady, was murdered at the hands of that defendant seated right over there at that defense table, Mr. Donsurvi Chisolm. And for the next few days that what I have the burden of proving to you.

First of all, I'm Russell Hilton. I think I introduced myself briefly before, but I'm Russell Hilton, one of the prosecutors of the First Judicial Circuit. At the table with me is Mr. Matt Austin, Detective Giglio from the

Sheriff's Office. More importantly seated on the second row of the courtroom is the victim's family, and they're here today to watch the trial.

As in every case that I try, I'm going to present testimony from the witness stand. I'm going to call witnesses, I'm going to introduce evidence, and the purpose of that is so that you will be able to listen to that testimony, look at that evidence, hear that testimony and reach a verdict, and that verdict says what happened that day and will hold someone accountable or not for what happened on September 13, 2007.

In this case, the evidence will show the defendant was with a person, excuse me, was with the victim on the night of September 17 -- excuse me -- September 13, 2007. He was with the victim in the Azalea Park Haven Oaks community, which is if you're familiar with Summerville, it's near Summerville High School. It's at the intersection of Highway 78 and Orangeburg Road. There's a BiLo there, there's Haven Oaks right behind the BiLo and Azalea Park is right behind Haven Oaks.

The victim and the defendant were together that night. From that Haven Oaks, Azalea Park area they went over to the Evergreen community, which is almost at the corner of Bacon's Bridge and Dorchester Road, and there they picked up a guy named David White, who goes by the nickname Sculley.

They picked up Sculley. After they picked up Sculley they went back to the Azalea Park Haven Oaks area looking for somebody to rob. And as they were going around that Azalea Park loop on the second go around, the defendant pulled out a gun put it to the victim's head and pulled the trigger. The victim died almost immediately after that. Murdered at the hand of that man, Donsurvi Chisolm, and it is from that point that the defendant and Mr. White, Sculley, went and disposed of the body out in the Clubhouse Road area, which is almost to Colleton County. They disposed of the body and Mr. Chisolm started covering up his tracks, and he did that by smooth talking the police, and you're going to hear about that.

Folks, many people get picked on jury duty and they let out this groan about having to serve, and I really didn't hear that in this case. But that's unfortunate. As a prosecutor, I will never be able to serve on a criminal jury, but you get to and you have that right. You have a right to serve on the jury. The defendant has a right to represent himself. The judge has told you that. But the state has rights, too, and the state has a right to a conviction when it can prove beyond a reasonable doubt, in this case, that the defendant murdered Craig Michael Canady four years ago, today.

Now, the defendant is charged with murder, and there's

no different degrees of murder in South Carolina. You're guilty of murder or you're not. And it's one of the most serious crimes that the state has and arguably has the shortest definition of all of them. Murder, the definition of that is the killing of another with malice aforethought, either expressed or implied.

So throughout the trial I've got to prove several things to you. One, I must prove the killing of Craig Michael Canady. Two, I must prove it's with malice, and three, that the defendant is the one who did it.

Now, what's malice? It may be a term you're not familiar with, maybe. At the end of this trial, I think the judge told you a few minutes ago, she will charge you on the law, and what that means is she'll go through all the elements, all the offenses, the offense of murder in this case, and all the other things that relate to the law, and she'll give you definitions of all those things, and examples of some of them, but suffice it to say, at this point, malice is just ill will or evil intention.

Now, one thing I didn't mention, one thing that's not an element of murder is motive. The state does not have to prove motive to you. You know, that's helpful sometimes, but that's not an element. Keep that in mind as you go through the case. You know, jurors are chosen from the community. You sat out there with a big panel of people

from right here in Dorchester County, and they are chosen from people from all walks of live. And it's those people that make the best jurors. You make the best jurors because you can look at somebody from the witness stand and say, I don't know about what that person is telling me. Or you can look at that person and say, I believe that person is telling me the truth. That's What you have to do as jurors. You're the fact finders. Like I said, in this trial you're going to hear from a fair number of witnesses, and I want you to do that in this case. I want you to listen to their testimony and ask yourself, is what they're saying, does that make sense, is their testimony corroborated. You know, do they have something to hide. Is their testimony corroborated with other testimony, physical evidence in the case. This trial is only going to take a few days, but by no means is it unimportant. It's important to the state, it's important to Mr. Chisolm, it's important to the victim's family.

I want to leave you with just a closing thought or two. The judge will tell you, I think has already told you, the defendant has elected to represent himself in this case, and she's also going to tell you that what I get up here and tell you in argument, what the defendant gets up here and tells you in argument are the questions that we ask aren't necessarily evidence. What's evidence is what comes from

that witness stand and what get introduced. That's what you listen to in this case, and Mr. Chisolm has chosen to be his own attorney. Just keep that in mind as we go through the trial.

I want to thank you for listening and being here throughout the course of the next couple of days. As you listen to this testimony, you'll hear bits of testimony and you'll ask yourself why did the prosecutor ask that question, why did the witness say that. I submit to you that everything that comes from that witness stand will be important to the case. You might not understand what that witness is talking about or why that witness is talking about that piece of evidence from the state. Just put it in the back of your mind. You know there's that analogy that a trial is like a puzzle, and it is. It is. Sometimes you get a piece of the puzzle and you don't know exactly where it goes at the moment, but you get a few other pieces and then you see where that piece fits in. That's what a trial is like, and at the end of this trial you'll see the big picture in that puzzle, and I'm convinced that after hearing all the evidence, after deliberating with your fellow jurors, you'll find the defendant guilty of murder of Craig Michael Canady on September 13, 2007.

Thank you.

THE COURT: Thank you, Mr. Hilton.

Mr. Chisolm.

MR. CHISOLM: Morning. First of all, I would like to thank you all for being here today, helping us bring this case to conclusion. My name is Donsurvi Chisolm. I am the defendant, and as you know, I will be representing myself. As to the question of why I'm representing myself, the simplest answer I can give is I'm searching for the truth, as I have been for the past four years. It was only upon representing myself, that I, not anyone else in this courtroom was able to get this case heard so that I may have a chance to clear my name.

With that said, one of the fundamental backbones of our legal system is the presumption of innocense, that we are all innocent until proven guilty beyond a reasonable doubt. It is upon this foundation of innocense that I stand.

Four years ago my friend was slain by an unknown assailant. Four years later, as the evidence will prove, that this assailant is still unknown and that I, Donsurvi Chisolm, am innocent.

As this case is presented, as this case is presented to you, I am confident, I am confident, my innocense, which is already presumed will be proven. The facts will show that upon hearing of my friend's death, I was one of the first to make myself available to friends, as well as, detectives and that during their two month investigation, I, myself, and my

close friend David Leon White continually made ourselves available, even though we were the ones being accused. And during this investigation detectives preyed on the limited eighth grade education of my co-defendant, David Leon White in an attempt to force a false accusation for conviction. At the end of their investigation, detectives got their way. The question is how. Did they use falsified reports and questionable tactics. Did one detective go above and beyond to insure that he close the case no matter the cost. Did they attempt to take two innocent lives along with the one that was already lost. I anticipate that together we will find the answers to these questions.

Craig Michael Canady, also known as Red, was my friend, just as David Leon White was my friend. And though he may or may not attempt to testify against me, I stand for all three of us. I, myself, will not take the stand in an attempt to refute any testimony he may or may not give. I am confident that the facts will show that any negative testimony that he gives is false and forced.

As I stand before you today, it is no long about what I intend to prove but what the state intends to prove. As I stand before you I am proving that I am willing to fight for not only myself, but for the -- but for answers to be sought for my friends lives, too. As I stand before you, I am showing that I stand for the truth. The truth is something

that evades us all very often and shimmers at the corner of our eye, and when we turn to capture it's image, it is gone. It is you mission to search for this light of truth and expose the deeds done in the dark.

With that said, I would like to thank you for listening to the truth as you have just heard it, and as you will continue to hear it throughout this trial.

Thank you.

THE COURT: Thank you, Mr. Chisolm.

All right, call your first witness, please, sir.

MR. AUSTIN: State calls Tonia Platt.

(Podium is moved from center of courtroom.)

THE COURT: Are you trying to get that out of the way, Mr. Austin?

MR. AUSTIN: I am. Do you want me to move it?

THE COURT: We can help you move it. Thank you, Mr. Hill. It -- thank you. Let's just move it on back. Mr. Hill, let's just move it all the way back over here. That's the beauty of it being on rollers.

Thank you so much. Little bit -- thanks Maj.

Very well.

THE CLERK: Please raise your right hand. State your full name for the record.

MS. PLATT: Tonia Platt.

THE CLERK: Could you spell name, please?

MS. PLATT: It's T-o-n-i-a P-l-a-t-t.

(WHEREUPON, Tonia Platt was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness, Mr. Austin.

MR. AUSTIN: Thank Your Honor.

TONIA PLATT - DIRECT EXAMINATION

BY MR. AUSTIN:

Q Ms. Platt, where do you currently live?

A Jedburg.

Q Do you remember what you were doing on Saturday, December 15, -- September 15, 2007?

A We were dog hunting at Pine Cone.

Q Where is Pine Cone?

A It's at the cut-off highway at Clubhouse Road.

Q Is that a hunting club?

A Yes, sir.

Q And did anything out of the ordinary happen that day?

A We were pulling on the side of the highway waiting for the dogs to come and all of a sudden there was a bunch of buzzards flying around, and I just happened to look down in the ditch, and there was a body lying in the ditch.

Q And where was the ditch, on the side of the road?

A Yes, sir.

MR. AUSTIN: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. AUSTIN:

Q I'll show you what's been marked as State's Exhibit No. 5, for identification purposes. Do you recognize that?

A Yes, sir.

Q Is that an accurate reflection of what you saw that day?

A Yes, sir.

MR. AUSTIN: Your Honor, I'd like to introduce this picture into evidence, State's Exhibit No. 5.

THE COURT: All right. Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well, State's Exhibit No. 5 in evidence without objection. It is a photograph.

(State's Exhibit No. 5, photo, was marked and entered.)

BY MR. AUSTIN:

Q Ms. Platt, can you describe what you saw that day, specifically, in the ditch?

A Just the body, and when I got off the tailgate, I was probably five feet from it. I tried to yell just to see if there was any movement. It wasn't. So I called the guy right down the road from us to come over, and he yelled also. There was no movement. Just lying in the ditch. So I called my husband, and he came around there. That's when

I left and he stayed.
Q And did he appear to be dead, the person in the ditch?
A Yes, sir. He didn't move at all.
Q About how far from the road was it?
A Probably 10 feet.
Q Okay. And so you said you called another person; who was that?
A It was Mike Black.
Q Okay, and so what happened after that?
A After I called him down, I called my husband on the CB to come around there, because I had my 10 year old son with me, and they came around, and that's when I left, and they stayed and called the police.
Q Is that the extent of your involvement in the case?
A Yes, sir.
Q Please answer any questions Mr. Chisolm has.
A Okay.
MR. CHISOLM: I have no questions.
THE COURT: Very well.
MR. CHISOLM: Thank you.
THE COURT: You may come down.
Call your next witness, please.
MR. AUSTIN: State calls Joe Burnette.
THE CLERK: Please raise your right hand. State your full name for the record.

MR. BURNETTE: Joseph B. Burnette, II.

(WHEREUPON, Joe Burnette was sworn to tell the truth.)

THE COURT: Your witness.

MR. AUSTIN: Thank Your Honor.

JOE BURNETTE - DIRECT EXAMINATION

BY MR. AUSTIN:

Q Officer Burnette, what do you do for a living?

A I'm a Dorchester County Sheriff's Deputy.

Q And how long have you been employed with the Sheriff's Office?

A About 11 years.

Q And what previous experience do you have in law enforcement?

A I started in Dorchester in '95. Stayed here until '98. Left there, went to Charleston County for five years. And in '03, I came back here.

Q Were you working for the Sheriff's Office back in September 2007?

A Yes, I was.

Q Were you asked to respond to a body being found in a ditch off Clubhouse Road?

A I was.

Q Was that on September 15, 2007?

A it was.

Q About what time did you receive that call?
A It was around five -- 5:37, I believe it was.
Q Okay. When you responded, what did you find at the scene?
A Once we made contact with our complainant, we observed a body laying in the ditch on the side of Clubhouse Road. At that point, we secured the scene. It was myself, Sgt. Dandridge, and another deputy. We secured the scene with crime scene tape, and move the witnesses away from the area and sent notification to the detectives.
Q And you're saying you secured the scene, what do you mean by that?
A What we do is basically, that's considered a crime scene. We don't know what we have at that point. All we know is we've got a body in a ditch. So we automatically assume there's something going on, so at that point we will secure the scene and keep anybody from coming into that scene.
Q That's just to make sure it's not tampered with in any way?
A Not tampered with, nobody messes with it any more than what has already been done.
Q Okay. What else did you do?
A Like I said, we made a notification to the detectives and to our command staff, and then we basically waited for

them to get there.
Q So at that point, crime scene investigation came?
A Crime scene arrived, detectives arrived, and I believe some from the command center.
THE COURT: I'm sorry?
MR. BURNETTE: Some from the command center.
BY MR. AUSTIN:
Q And so was that the extent of your involvement?
A Yes.
Q You said 5:37. Was that 5:37 p.m.?
A P.m. In the afternoon.
Q Okay. Please answer any questions Mr. Chisolm may have.
THE COURT: Cross examination.

JOE BURNETTE - CROSS-EXAMINATION

BY MR. CHISOLM:
Q Would you recall the clothes that the victim was wearing?
A I don't recall right off-hand.
MR. CHISOLM: Your Honor, could I show him the picture for recollection refresh?
THE COURT: You certainly may.
MR. CHISOLM: Okay.
(Photo passed to witness.)
BY MR. CHISOLM:

Q Now, in regards to that --

MR. CHISOLM: Mr. Loy, could you help me for just one second.

Q -- I'd like to ask the blood pattern that you see that stain on the picture?

A I'm not sure where you're talking about. If you want to point it out, that's fine.

THE COURT: Hold on one second. You go ahead and consult with Mr. Loy.

MR. CHISOLM: Okay.

THE COURT: He's right behind you. There you go.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q All right. Looking at the picture, your recollection is refreshed, correct?

A Yeah.

Q Can you -- by looking at the picture, can you tell where the blood patterns are?

A I -- I --

Q The stain on the upper regions --

A I see something. It's a different color than the shirt?

Q Yes. Okay, and I'd like to go into that.

A Okay.

Q Could you look, and could you tell me if on the right

side of the deceased, is there any blood, is the shirt white on the right side of the deceased?

A It appears to be.

Q Now, on this upper area --

A Yes.

Q -- okay, I'm sorry. If you could turn it sideways. If you could look at this upper region here, you can see a dark stain pattern that would -- sir, I'm sorry, just one second. Do you see that dark stain pattern that would kind of follow this trial in the upper region going to the left?

A Yes.

Q All right. So in accordance with your testimony, this region, the lower back region and the full right side from which you can tell as the victim lay at that time, it's -- there's no blood?

A I know the shirt's white. I don't know if that's blood.

Q It's not stained?

A Right.

Q It's only stained here?

A Right.

Q And this area is clear?

A It doesn't appear to be stained, no.

Q Thank you, sir.

MR. CHISOLM: That's all.

THE COURT: Very well.

What's I'd like to do is just to mark that for identification purposes. If you'll just hand it -- you can still take it back if you need it.

MR. CHISOLM: All right. Can I ask a question?

THE COURT: Absolutely. You may.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Okay.

THE COURT: That's right. It's not going into evidence, it's marked for identification purposes, so our record is clear.

MR. CHISOLM: Yes, ma'am.

COURT REPORTER: Defendant's No. 1.

(Defendant's Exhibit No. 1, photo, was marked for ID only.)

MR. CHISOLM; I'll leave it there.

THE COURT: Okay, leave it there, but it's there if you need it.

MR. CHISOLM: I have no further questions, sir.

Thank you.

THE COURT: All right.

Any redirect?

MR. AUSTIN: Nothing further.

THE COURT: Very well. Is this witness free to leave?

MR. AUSTIN: Yes, ma'am.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. You are free to go.

All right. Call your next witness, please.

MR. HILTON: State call Detective Bistromowitz, Joe Bistromowitz.

THE CLERK: Please raise your right hand. State your full name for the record.

MR. BISTROMOWITZ: Joseph Bistromowitz.

THE CLERK: Spell your name, please.

MR. BISTROMOWITZ: B, as in boy, i-s-t-r-o-m-o-w-i-t-z.

(WHEREUPON, Joe Bistromowitz was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

JOE BISTROMOWITZ - DIRECT EXAMINATION

BY MR. HILTON:

Q Det. Bistromowitz, where are you employed?

A Dorchester County Sheriff's Office.

Q And how long have you been working there?

A Since 2000.

Q And what was your assignment back in 2007, September, specifically?

A I was assigned to the Criminal Investigations Division.

Q Is that akin to detectives?
A Detective, yes, sir.
Q And were you asked to respond out to a scene on September 15, 2007, out in the Clubhouse area to a body found in a ditch?
A I was.
Q And did you respond to that scene?
A I did.
Q And when you got to the scene what was your involvement?
A When I first arrived on the scene I was given a key chain with a CVS card and a BiLo card. They asked me to take that and find out if I could get any information on the cards.
Q Were you all trying to figure out who this person was?
A Yes.
Q Did he have any identification on him at the time?
A No.
Q And with those cards, the CVS and the BiLo card, what were you about to find out?
A We were -- I responded to the CVS at Orangeburg and Central and spoke to an employee there who was able to furnish me with Tamekka Williams name, address and telephone number.
Q Now, obviously, the person in the ditch wasn't Tamekka

Williams, isn't that right?
A They was not.
Q Did you end up speaking with Tamekka Williams?
A Yes.
Q Where was that?
A That was at her apartment at 523 Orangeburg Road, Apartment E-8.
Q When was that?
A September 15, 2007.
Q And when y'all went to speak to Tamekka Williams, what did you end up telling her?
A That we had located, there was a dead body located on Clubhouse Road, and that the key chain was found on that person. And she, at that point, got upset.
Q Now, did she give you any information as to who the victim was?
A Yes. She said it was her boyfriend, Craig Michael Canady, Jr.
Q And who was at the apartment at the time that you went over there?
A There were several people gathered there. Cara Palmer, (sp) Anastasia Williams, Nicole Palmer, Angela Dicks, Sierra Wiggins, Kimberly Williams, and Omar Birch (sp).
Q And all these people, were they just friends of Tamekka Williams?

A Yes. Neighbors, friends.
Q And did one of them end up leaving?
A Yes. Omar Birch went to the Coroner's Office to identify the body.
Q And what -- do you remember what relationship Omar Birch had with the victim?
A They were friends.
Q Do you remember a time on September 15, the day that you were at Tamekka Williams apartment, where the defendant, Mr. Chisolm came up?
A Yes. We were standing outside Ms. Williams apartment and he came up and provided some information.
Q What information did he provide?
A He came up to us and advised that he last saw the victim on Tuesday evening or Wednesday morning at approximately 1:00 to 2:00 a.m., and that he and another friend had been hanging out with him. He advised that he picked up Red from site and rode around until 4:00 a.m. He stated that he dropped Red off and he saw Red jump the ditch at Azalea Apartments. He advised that during the time they were together, he advised that they saw Sculley and Evergreen and that he last saw, you know, the victim jump the ditch going up to Azalea Apartments.
Q All right. And let's -- let's pause for just a second and go over some nicknames. We got -- the victim in this

case, Craig Michael Canady, did he go by a nickname?
A He went by Red.
Q Okay. So Craig Michael Canady is Red. Donsurvi Chisolm, did he use any other names?
A Don.
Q Don. And David White, the co-defendant, did he use any other names?
A Sculley.
Q And during that conversation with Mr. Chisolm at Tamekka Williams, did he give you a cell phone number?
A He did. He provided me with [redacted].
Q Now, that was September 15. On September 16, the next day, did you go back to Ms. Williams apartment that day?
A I did.
Q And what was that about?
A I had provided Ms. Williams and her sister a ride home from the Sheriff's Office after they completed an interview with Detectives Walsh and Giglio.
Q Did she have some stuff that she wanted you to look at?
A Yeah, she advised that she had pertinent information in this case, some information that might be pertinent to this case.
Q And what was that stuff?
A There was some of the victim's belongings.
Q Had the victim and Ms. Williams been living together?

A Yes.
Q And when you got back to the apartment on the 16, did Mr. Chisolm come up to you again?
A Yes, he did.
Q And what did he have to say at that time?
A He asked if I needed any assistance from him, and I basically told him that we'd probably be by there to take a statement from him later.
Q Now, in your experience as a law enforcement officer, looking back on that, does that seem a little out of the ordinary for that area?
A Yes, it does.
MR. CHISOLM: Objection, Your Honor. Relevance.
THE COURT: Sustained.
BY MR. HILTON:
Q Now, later on that day on the 16, did you end up getting a statement from Mr. Chisolm?
A Yes.
Q Where was that?
A At the sheriff's office.
Q And did he come in voluntarily?
A He did.
Q Did you read him his Miranda Rights?
A Yes, I did.
Q Did he seem to know what was going on?

A Yes.
Q Did he appear to be cooperative at the time?
A Yes, sir.
Q And as far as the information that's pertinent to the case, what did he tell you at that time?
A He advised that he saw Red at Haven Oaks about 1:00 to 2:00 in the morning. He advised that he and the victim were hanging out at Jennifer's house on the porch. Mr. Chisolm advised that the people that were present, Psych, Jen, Red and himself. Mr. Chisolm stated that -- advised that he and Red left to go to Sculley's house in Evergreen to pick up Sculley. He advised that he, Red and Sculley drove around in his vehicle getting intoxicated on beer and other things, mainly cocaine. He advised that once they were done he dropped Sculley off at his residence in Evergreen and proceeded back to Haven Oaks. He advised once back at Haven oaks, he went back to Jen's apartment and Red jumped the ditch to go to Azalea Park Apartments. He advised that was the last time that he saw Red.
Q So maybe with a little more detail, but similar to the story that he gave you on the 15?
A Yes.
Q Okay. Now, do you remember what time that statement was?
A Ah -- hang on one second. That statement was -- he was

read his Miranda at 16:20 hours.
Q What does that mean in regular hours?
A 4:20 p.m.
Q Okay.
A And the statement was about 4:42 p.m. is what I have written.
Q Now, was there a time after that that you talked to Mr. Chisolm again?
A Yes.
Q When was that?
A Early morning of September 17.
Q So even though it's on the 17, it's not a whole lot of time between the 16 statement and the 17 statement?
A No, several hours.
Q Now, what information were y'all looking for at that time?
A Basically, we had obtained new information from other witnesses and we wanted to question Mr. Chisolm one more time on the time line.
Q Now, the second time, the statement on the 17, did he come down voluntarily that time?
A He did.
Q And what did he say on that occasion?
A He reiterated the first statement, that he and Red and Sculley were driving around Haven Oaks, Azalea Park

Apartments and, you know, whenever they were done, he took Sculley back to Evergreen and dropped Red back off at Haven Oaks.

Q Did y'all question him as to the dates that he gave you?

A Yes. He -- we questioned him on the dates and he said that it could have been Tuesday. Initially, he said late Tuesday or early Wednesday morning, and then he changed and said it could possibly be Wednesday night, early Thursday morning.

Q Did he say how you could verify that?

A Yeah, phone records.

Q And did y'all end up verifying?

A Yes, sir.

Q And what time did y'all verify that it was?

A It was --

Q Actually, what day --

MR. CHISOLM: Objection. Hearsay.

THE COURT: Sustained.

BY MR. HILTON:

Q During the course of the investigation were you able to determine that it was actually Wednesday/Thursday instead of Tuesday/Wednesday?

A Yes.

Q Now, did you question him on the 17 about where and all

they had traveled that night and where they had gone that night?

A Um --

Q The three of them, being, the victim, Sculley and the defendant?

A May I have a second.

(Pause reading notes.)

A Yeah, he advised they were around Azalea Park, Haven Oaks riding around.

Q Did he say that they stayed pretty close to that area?

A Yes, sir.

Q And I guess that would be with the exception of Evergreen area?

A Yes, sir.

Q Did he tell you where every one was sitting in the car that night?

A Yes, sir.

Q Where was that?

A He advised that he was driving. That Red was in the front passenger seat and Sculley was sitting behind him in the rear driver's side seat.

Q Please answer any questions Mr. Chisolm may have for you.

THE COURT: Cross-examination.

JOE BISTROMOWITZ - CROSS-EXAMINATION

BY MR. CHISOLM:

Q How are you doing.

A Okay.

Q All right. So if someone comes forward after their friend has been killed and they want to help any way that they can, you said you find that suspicious?

A Well, it just seemed that you were overtly helpful about coming forward with the information.

Q Do you find that suspicious?

A Do I find you coming forward --

Q If someone comes forward after their friend has been killed and they are trying to help, do you find that suspicious?

A No.

Q If I didn't return your calls or refused to come in would you have found that suspicious?

A Yes.

Q Do you know what the term, lawyer up, means?

A Do you want to get a lawyer?

Q Could you explain that to the jury, if someone is in interrogation and they sign a lawyer up, could you explain what that --

A Yes.

Q -- exactly is saying?

A It's your right at the time of questioning, you know,

you can have an attorney with you while you are being questioned. It's part of the Miranda Warning.

Q If --

A If you decide to get a lawyer, I guess that term, lawyer up.

Q Do you all find, tend to find it suspicious when people lawyer up, when they refuse to cooperate?

A I mean, that's your right.

Q I understand that's my right. Do you find it suspicious in an interrogation if someone just completely shuts down and lawyers up?

A It just depends on the situation, I guess.

Q If I lawyered up as soon as I came in would you have found that suspicious?

A I mean, that's your right. I can't say it's suspicious.

Q You're not responding -- I'm trying to --

MR. CHISOLM: He's not directly answering the question. I'm asking --

THE COURT: I know. What he said was, what he said was that is your right. At that point, you interpreted him. I don't know if he's finished with his response. So let's let him finish his response.

MR. CHISOLM: Yes, Your Honor.

A I mean, it could be suspicious just, but I mean, that's

your right as a citizen of the United States.

BY MR. CHISOLM:

Q According to your testimony, what I did in cooperating fully was suspicious?

A Overtly coming out every time that we went into the subdivision or the apartment complex coming out seeking us out was a little suspicious. Yes.

Q Were you aware that we were looking for my friend for two days?

A You guys were out there looking. I was not aware of that, no.

MR. CHISOLM: One second, Your Honor.

THE COURT: All right.

BY MR. CHISOLM:

Q When I approached, did I approach you first or did I approach Tamekka first; do you recall?

A I don't recall.

Q Okay.

MR. CHISOLM: One second.

THE COURT: Very well.

BY MR. CHISOLM:

Q Could you turn to Page 3 of your report, to help your recollection, please.

A Yes.

Q Second paragraph, first sentence?

A It says, while speaking with Tamekka a male subject approached me and stated that he last saw Red on Tuesday evening or Wednesday morning at approximately 1:00 to 2:00 a.m. Do you want me to keep reading that whole sentence or --

Q One second. Did I ask you why the police were there?

A No, not that I recall.

Q So I just came to you and just started giving you information?

A I believe so. When we came up, you came up and started talking to me. That's what you told me. I don't recall if you asked why we were there. What we were doing there. I don't recall that.

Q I had no idea what you were doing there, but I came and gave complete information.

A I mean, it's possible you could have asked what we were doing there. I don't know.

Q All right. You say at the time I was very forthcoming with information and helpful; correct?

A Yes.

Q All right. And I didn't attempt to evade you or dodge any questions; correct?

A Right.

Q And I did offer to give a statement fully of my free will?

A Yes.
Q Okay. When you asked me for another statement on September 17 --
A Yes.
Q -- and you said that you came to my house at 1:30 in the morning; correct?
A Yes.
Q All right. And when you woke me up at 1:30 in the morning, did I complain or seem mad, angry?
A No, you came in voluntarily.
Q Cooperated?
A Yes.
Q Concern for my friends?
A Yes.
Q Do you have a copy of the Miranda Rights?
A I do.
Q Could you please read the Miranda Rights for us, please?
A Which time, the first one or the second one?
Q Yeah, the same set of Miranda Rights.
A It's the same one, but I didn't know if you wanted a particular --
Q No, sir. Just in general Miranda Rights, please?
A Okay. You have the right to remain silent. Anything you say can or will be used against you in a court of law.

You have the right to talk to a lawyer and have him present with you while --

THE COURT: Slow down, because the court reporter has to take down what you're saying.

A Okay. You have the right to talk to a lawyer and have them present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish. You may decide at any time to exercise these rights and not answer any questions or make any statement.

Q And I gave up all these rights to help you with your investigation into my friend's death?

A Yes.

Q Okay. When I gave up these rights, you say I gave you information into what we were doing that night?

A Yes.

Q And I admitted we were driving around, getting intoxicated, possibly using illegal substances; things that are against the law?

A Yes.

Q I gave up these rights and admitted to doing unlawful acts, all in an effort to help my friend or to help your investigation?

A Yeah, you gave us information.

Q Okay. Could you tell me what all information I gave

you?

A As far as?

Q My statement, could you read that entire statement for me?

A Your whole statement?

Q Yes.

A The first one, the written statement?

Q Yes, the written statement, please.

A You said, on Tuesday night about 1:00 or 2:00 in the morning, I saw Red in the Haven Oaks Apartment complex. We chilled at Jennifer's house in and out on the porch. The people there were Psych, Jen, Red, and myself.

THE COURT: Slow down just a little bit again, so our court reporter can --

MR. BISTROMOWITZ: Do I need to start over or --

THE COURT: No.

A Me and Red left to go to Evergreen while Psych was also leaving for Evergreen. We saw Psych at Evergreen. I picked up my friend Sculley. We drove around getting intoxicated and doing other things. Once we were done, I dropped off Sculley. I proceeded to Haven Oaks where I went to Jen's house. Red jumped across the ditch to Azalea Park. After Jen's I went to my house. This was the last time I saw Red. It says, Red is not know for any real problems except --

MR. HILTON: Your Honor, I'm going to object to that.

THE COURT: Very well. All right. Our security folks have an awesome responsibility, and I would appreciate so very much if you would cooperate with them, and I assure you they mean no one anything other than security and safety for all, and if I could anticipate -- and I look forward to your cooperation with them.

All right. Very well.

All right. Now, obviously -- I've got a couple of considerations. My first consideration is you know, Mr. Hilton, it's never appropriate to publish a document that's not in evidence. You didn't object to that. And obviously there is a document that is being published into evidence that isn't in evidence. So now you're objecting to this portion of the document being published?

MR. HILTON: On the basis of third-party guilt.

THE COURT: Well, the whole document -- it ought not be published in any event, because it's not in evidence. So you're not going to object on that basis, you're just going to object to this little piece of it; is that where we are?

MR. HILTON: Well, I didn't introduce the document. I didn't think that was appropriate. I mean --

THE COURT: Right, but it's being published, and the rule is you don't publish a document that hadn't been introduced into evidence. And he's publishing a document that's not in evidence.

All right. So, let me look at the statement. I don't have it. I don't know what it is.

(Document passed to the Court.)

THE COURT: All right. So where is your concern?

MR. HILTON: At the bottom of the statement he says, Red is not known for any real problems except one person, Josh, who stays at Haven Oaks. I have not actually witnessed any of their altercations, but have heard through the grape vine. I have witnessed Red carrying his weapons in very close proximity to himself for protection because of a threat made by Josh. I was told he said to Red, I'm going to kill you and if I can't get you, I'll get your seed first.

I mean, even in the statement itself, I've heard it through the grape vine. That's just mere conjecture of some third-party guilt. And, I mean, the case law prevents that.

THE COURT: All right. None of that is admissible, but again, is a document that is being published for which there was no objection to, and I gather now there's objection to the remainder of the document being published. It is hearsay. At least doubt hearsay. Maybe more than that, but it is at least double hearsay if not triple hearsay.

MR. CHISOLM: Your Honor --

THE COURT: Yes.

MR. CHISOLM: Your Honor, I'm not offering it for the

truth of the matter asserted. I'm offering it to underscore my cooperation, that I was putting everything on the table, letting it all out there. At the beginning of the statement I said a lot of things that could incriminate me, and I just wanted it to be known that I put everything out, everything that I could possibly tell them to help them with their investigation, I put forth.

THE COURT: I'm with you. It's still inadmissible. Thank you. There's no -- I find that -- I find that it is hearsay and it is inadmissible hearsay.

Anything further?

MR. HILTON: Nothing from the state, Your Honor.

MR. CHISOLM: One other thing.

THE COURT: Sure. Of course.

MR. CHISOLM: Your Honor?

THE COURT: Yes.

MR. CHISOLM: The next question I want to ask, I won't ask specifically what was in the statement, but I'll ask questions, did I give you further information to help your investigation. You know, not exactly asking exactly the way I did, but just to get the point across that I did give more information than what was there. That it wasn't limited to that portion.

THE COURT: Very well. Let me just be clear that the -- that's fine.

MR. CHISOLM: Yes, ma'am.

THE COURT: But the specifics of what is in the statement would be inadmissible. It's inadmissible because clearly the statements that you are referring to are out of court statements, and I find that it would be admitted for the truth of the matter asserted, therefore they're hearsay statements. I do not find that there is an exception that applies. However, if you're going to ask a general question, did I continue to give information about these matters or to help you in your investigation. Those are fine so long as they are general, but you cannot get into these specific statements, okay?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well. Let's take our break. Fifteen for us.

Do not discuss your testimony during the break, please, sir.

MR. CHISOLM: No, ma'am.

(Court in recess for morning break.)

(Court in session after morning break.)

THE COURT: Thank you so much. Please be seated.

All right. Anything before we bring the jury out, from the state?

MR. HILTON: Nothing from the state.

THE COURT: Mr. Chisolm?

if they have they get removed in my chambers and shredded in my chambers. The only reason I tell you that is that I did want you to know that they are protected so that in the event you don't take them or your choose not to take them, or you're just doodling. I don't want you doodling. Then what does happen is they come to me and they are shredded and destroyed in my office so that your notes, your privacy in your notes is maintained. I just forgot to tell you that earlier, so I'm telling you that now.

All right. Any objection to my comment to the jurors?

MR. HILTON: Nothing from the state.

THE COURT: From Mr. Chisolm?

MR. CHISOLM: No, ma'am.

THE COURT: Very well. Are you ready to proceed with your cross?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well.

If you will, pull that mic down just a little bit.

There you go. Perfect.

JOE BISTROMOWITZ - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q When I gave you my statement, did I give you further information to help your investigation?

A Yes. You gave us information other than what was --

Q And was this information acted upon and did it help you

in a sense to further your investigation?
A Yes.
Q Okay. Now, during my interview you all said there was a -- the second interview, I'm sorry. You all said that there was a time discrepancy that you all wanted to talk to me about --
A Yes.
Q -- from talking to other witnesses?
A Yes.
Q All right. At this time, did I contest your discrepancy, did I try and say that that person was wrong, whoever said the time discrepancy, you know whoever stated that the hours that we were together was different times, did I say that they were wrong?
A No.
Q Okay. Did I, in an effort to help you all, offer to search my phone records to clarify, because obviously I was a little intoxicated at the time. I wouldn't know exactly, I wouldn't want to give you wrong information so I asked you to check the phone records to verify, to verify exactly what times we were together?
A Yes.
Q Okay. All right. Is it true that I properly offered any information that I had because I didn't want to halt your investigation due to the fact that I believed that I was

going to a screening, which is MEPS, military screening?
A Yes, sir.
Q And within a few days and I didn't want to halt your investigation?
A Yes.
Q Okay. Are homicide investigations top priority?
A Are you asking me?
Q Yes.
A Yes. That is a high priority case.
Q Okay. Was my friend's a top priority?
A At the time?
Q Was my friend's case, at the time, a top priority to your office?
A Yes.
Q Okay. Would it be true, or is it true, that say the first 48 hours of an investigation are a crucial time, you know to get leads and get the investigation started?
A Yes.
Q Okay. If that all is true, can you tell me why you all waited 24 hours to start taking formal statement from me, a person who was trying to help you?
A Initially, when we responded to the scene, we didn't know how the victim had died. That wasn't revealed, you know, the gunshot wound wasn't revealed until after the autopsy was performed. So we didn't know if he had been hit

by a car or what -- how he passed away.
Q But someone died?
A Right.
Q And it was important to know?
A Yes.
Q Okay. But you waited to continue your investigation?
A Well, we weren't sure of the manner of death. We didn't know if he had been struck by a vehicle or how the manner of death was.

MR. CHISOLM: I have no further questions.

THE COURT: Redirect?

MR. HILTON: Thank Your Honor.

THE COURT: All right.

JOE BISTROMOWITZ - REDIRECT EXAMINATION

BY MR. HILTON:
Q Detective Bistromowitz, there was some cross-examination about whether it was suspicious for the defendant to come up and give you information; what area did Tamekka Williams live in?
A Haven Oaks.
Q And is that an area that you'd consider a high crime area?
A Yes.
Q And is it common in your practice as a law enforcement officer that folks in the Haven Oaks area come to you and

give you information?
A No, they don't.
Q And is that why you thought Mr. Chisolm's approaching you and giving you information was suspicious?
A Yes.
Q Mr. Chisolm asked you if, I think one of this questions was something about looking for his friend. Did anybody call police to report that Red was missing from September 13 to September 15?
MR. CHISOLM: Objection. Hearsay. No foundation, Your Honor.
THE COURT: Just a second. Overruled.
BY MR. HILTON:
Q If you're aware, did anybody call the Sheriff's Office or law enforcement to report that Red had been missing?
A No, not to my knowledge.
Q Did Mr. Chisolm, when he came up to you, did he ask you why you were there?
A Not to my knowledge. I don't recall if he asked why we were there or not, to be honest with you. I just remember him coming up and engaging me in conversation.
Q And I think in your direct testimony, you said that Tamekka Williams appeared shaken up when you gave her the information that you had found the victim in the ditch; is that correct?

A Yes.

MR. CHISOLM: Objection. Leading the witness, Your Honor.

THE COURT: Sustained. Don't lead.

BY MR. HILTON:

Q And so did it appear to you that she didn't even know that Red was dead at the time?

A She did not.

MR. CHISOLM: Objection. Leading the witness.

THE COURT: Mr. Hilton, stop leading, please.

BY MR. HILTON:

Q Detective Bistromowitz, are you aware of any way the defendant would have known that the victim was dead?

MR. CHISOLM: Objection. Speculation, Your Honor.

THE COURT: Sustained.

MR. HILTON: No further questions. Thank you.

THE COURT: Recross?

JOE BISTROMOWITZ - RECROSS EXAMINATION

BY MR. CHISOLM:

Q Detective, could you tell us all what the time discrepancy was?

A The time discrepancy for?

Q During the interview when y'all called me back in on 9/17?

A That early morning?

Q Yes. And y'all said there was a time discrepancy between the witness statements?

A Well, we were trying to get a time-line, basically, you know, what time you guys were in the vehicle. Basically, we were trying to ascertain your time-line as it relates to what happened, what occurred. Basically, the new information that we had was basically the date issue that we had they said that it was -- Tuesday evening, Wednesday morning, and they said, you know, they said that it was, you know, Wednesday night, Thursday morning.

Q And how did you all eventually resolve this issue?

A With phone records.

Q And that was at my suggestion, correct?

A Yes. You suggested to obtain your phone records for the time.

Q And, once again, helped you all further your investigation?

A Yes. That was something that we would have done anyway, but yes.

Q Thank you.

THE COURT: You may come down.

DETECTIVE BISTROMOWITZ: Thank you.

THE COURT: Call your next witness.

MR. HILTON: State would call Tamekka Williams.

May this witness be excused, Detective Bistromowitz?

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. Yes, you may.

THE CLERK: Please raise your right hand. State your full name for the record.

MS. WILLIAMS: Tamekka Williams.

THE CLERK: Could you spell your name, please?

MS. WILLIAMS: T-a-m-e-k-k-a W-i-l-l-i-a-m-s.

(WHEREUPON, Tamekka Williams was sworn to tel the truth.)

THE CLERK: Thank you.

COURT REPORTER: Could you spell your first name, again, please?

MS. WILLIAMS: T-a-m-e-k-k-a.

THE COURT: And would you pull that microphone just a little bit closer. Thank you.

Your witness.

MR. HILTON: Thank Your Honor.

THE COURT: Uh-huh.

TAMEKKA WILLIAMS - DIRECT EXAMINATION

BY MR. HILTON:

Q All right, Ms. Williams, you're going to have to speak up, okay. Thank you.

A Okay.

Q Where are you living now?

A I live in Sangaree.
Q Okay. And back in September of 2007, where were you living?
A Orangeburg. Orangeburg Road.
Q And is that an apartment complex?
A Yes, sir.
Q Which one was that?
A Summerville Apartments.
Q Was it the Haven Oaks Apartments?
A Haven Oaks.
Q Now, did you know the victim in this case, Craig Michael Canady?
A Yes, I did. I was his girlfriend at the time.
Q And where was he living at the time?
A He was residing with me, sir.
Q Now, let me turn your attention back to September 10 or so, 2007. This would be right before the time that he went missing. Had you talked to Red around that time?
A I called him, you know, I wanted to -- you know, talk to him, not leave on bad terms. It was an argument and I called and told him he was going to reside with his friends and calm down for a while.
Q And did he leave your apartment?
A Yes, he left my apartment.
Q Did he ever pack his stuff or anything?

A He packed up everything. When he packed up everything he sat it by my wall, I believe, where my kitchen is, the built-in. He sat everything there in the corner.

Q And when was the last time that you talked to him?

A I hadn't talked to him after that. I had a message on a Wednesday where he said he was going to stay with a friend. I didn't talk to him no longer.

Q Now, do you remember that Saturday, the 15, when the Sheriff's Office came to your apartment?

A Yes, sir.

Q Do you remember why they came to your apartment?

A They came to tell me they had discovered a body.

Q And who did you have over at your apartment that day?

A My sister was there. I can't even remember it was so many people that knew me, but they had came over, and my friend Patrice. A lot of people were over there. I don't remember every one.

Q Did the defendant come up?

A Yes, sir, he did.

Q And what was that about?

A He walked from the back and told me -- when the folks were standing around outside, he was like do you need anything, you know, I'm here, and he put his number in my phone. I had my friend erase him out of my cell phone at the time.

Q Had you asked him for any help at that point?
A No, sir. I was too upset.
Q Okay. Please answer any questions the defendant may have for you.
THE COURT: Cross-examination.
TAMEKKA WILLIAMS - CROSS-EXAMINATION
BY MR. CHISOLM:
Q All right. You said Red pack up everything?
A Yes, he packed everything up.
Q Could you tell me why he was leaving?
A Me and him had an argument, everyone has arguments. We had an argument, and he said he was going to leave and go stay with one of his friends.
Q Okay. As a result of this argument did you of your male cousins come to the house?
A Yes, and they left.
Q Was that Ace and Horse?
A Yes, and they left. They didn't stay there.
Q Did they come because of the argument?
A They came to see how I was -- I called my father, and my father was like, are you okay, because he heard him raving at me and going at each other.
Q After Ace and Horse came over, did I come over?
A I don't know if you came over.
MR. CHISOLM: One second, Your Honor.

THE COURT: All right.

BY MR. CHISOLM:

Q Do you recall telling detectives on 9/17/07 -- did you have an interview with detectives on 9/17, September 17?

A I don't remember the date. I know I went down to talk with them. I don't remember the date.

Q Do you remember that you had two interviews with detectives?

A Yes, I remember the interviews.

Q During this second interview with detectives do you remember telling them that after you and Red had your argument that Don came over?

A No, I don't remember you coming to my house.

Q So you -- Did you tell detectives in this same interview that the argument that you and Red had was partially because of me?

A No. I don't remember that.

Q So you and Red never got into an argument?

A We got into an argument. The argument was about him -- well, you know how people argue about cleaning the house or something like that. You go through that every day.

Q So you never argued with Red about chilling with me as often as he did?

A No.

Q Do you recall the 9 -- the first interview, telling

detectives that I was the only one that was really cooperating?

A No.

Q Do you recall in the same interview, telling detectives, talk to Don, he'll talk to you. Let him tell you?

A I don't recall that.

Q Okay. Do you recall telling detectives in this same interview I was a cool person and I was there for you the night you found out?

A I don't recall that either.

Q Okay. Do you recall telling investigators that D and Red were always together and you didn't know anyone else who hung together like us two?

A Yes, I do remember telling them that.

Q Okay. During that argument that you had with Red, did he bite you on the leg?

MR. HILTON: Objection, Your Honor. Conjecture.

THE COURT: All right. Ladies and gentlemen, there's a matter of law that I must take up outside of your presence. I'm going to ask you to please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. We will be with you shortly.

(Jury out at 11:14 a.m.)

THE COURT: All right. Tell me what the objection is

MR. CHISOLM: Yes, ma'am.

THE COURT: Very well. Let's have the jury.

(Jury in at 11:22 a.m.)

THE COURT: All right. Okay. You may continue.

MR. CHISOLM: I'm just going to review for one second, Your Honor.

THE COURT: Sure.

TAMEKKA WILLIAMS - CONTINUED CROSS EXAMINATION

BY MR. CHISOLM:

Q How often would you say me and Red were together?

A I don't know. He would come and go, he had a lot of friends. People that liked him. I don't know.

Q All right. Do you recall telling the detectives in your first interview that you had no idea who most of the people were that showed up at your house that night?

A Well, I have a lot of love ones. I've got a lot of friends. Females that would come to my house, and I really didn't socialize with too many people, but there were people that live out there in my apartment complex, and then some of my family members were also over there.

Q During your interview, did you tell detectives that you didn't know most of the people that showed up?

A I mean, when something happens, people come that he knows.

Q That must be it?

A Yeah. I don't know.
Q Did you recall telling detectives on this same interview that most of the guys in Haven Oaks ran and jumped the ditch when police came around?
A That's always -- Every time the police come they ran.
Q Did you tell the detectives that I was the only one that wasn't scared to talk to the police?
A As I recall, I remember you telling me that you had -- that you were cooperating with them, as far as I know. I don't remember telling them that.
Q Can you tell me who Joshua Stokley is?
MR. HILTON: Objection.
THE COURT: All right. And the basis is relevance?
MR. HILTON: Third-party guilt.
THE COURT: All right. Again, ladies and gentlemen, there's a matter that I must take up outside your presence. So please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you.
(Jury out at 11:27 a.m.)
MR. CHISOLM: Your Honor, may I make a proffer?
THE COURT: You can't see the door and neither can I. So we have to wait to hear the sound of it closing. So that's what I was waiting for.
First of all, as I understand it, the objection is on the basis of third-party guilt, and yes, sir, you may make a

been I don't remember or no. There certainly could be a reason in cross-examination by Mr. Chisolm to refresh her recollection with regards to those matters, and they will certainly be consistent with his theories of his case, as he argued in his opening. In that regard, I certainly think it's appropriate for him to ask that she look at the video tape. She said it would refresh her recollection.

With regard to the third-party guilt, in all candor you have to appreciate where I am at this point. I don't know that. I am aware of the Gregory case. I am aware of the Holmes case. I know that I certainly, if that is his position, I certainly can't just dismiss it out of hand. And it has to be addressed. I have to listen to the witnesses, I have to listen to the evidence of third-party guilt, because as we know from the Holmes case I cannot disallow it out of hand.

So I don't know where we are. We are where we are.

MR. HILTON: I understand. I'm just trying to save a little time.

THE COURT: That -- ultimately that my save you no time. That may cause you a lot more time. So -- in any event that's where we are.

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: Obviously, we need to mark these for identification purposes, too, please.

THE COURT: Okay.

MR. CHISOLM: I'm pretty sure.

THE COURT: Okay. All right. The question -- let me just recap. The question was to Ms. Williams, would playing the tapes of your interviews, would that refresh your recollection. Her response was, yes. She has now seen a portion of the tape. She has not seen all of the tape of even the first tape, and obviously she has not seen the second tape. Remember the reason that the tape was played was to allow for Ms. Williams to refresh her recollection. So you can certainly begin your questioning again at this time, if you wish. But if -- let me just say to you, if you intend to refresh her recollection any further. I don't want to send this jury out again. I've sent them to lunch early because this was the time to do that. So if you want to refresh her recollection additionally with these tapes, let me just tell you that now's the time to do that.

MR. CHISOLM: I'll keep my questioning in line with what I know she remembers.

THE COURT: Okay. Very well. All right. Then, let's -- Okay. Than additional questions with regards to your proffer?

MR. CHISOLM: May I have one moment?

THE COURT: Of course. Yes.

(Mr. Chisolm confers with Mr. Loy.)

you thought Red -- I mean, Josh and Diane clearly had something to do with Red's death?

A I watched the video. I heard the video.

Q I'm asking if you said that?

A Yes, I said that. I remember saying it.

MR. CHISOLM: One second, please.

THE COURT: All right.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Did you tell detectives during your interview that you received -- what you would call a questionable phone call from Diane, Josh's girlfriend.

A Yes. Well, in the beginning I had called -- well, she already knew that he was missing, because everybody was trying to look for him, and she called me that night. We both went job hunting. That was her response to calling me. I'm going to go job hunting that Friday. She came out that -- I discussed with her that he was missing, and she was like, that's when she just came out and said, who -- I think I told her that somebody, you know, had did something to him. I think somebody hit him or something. She was like, who would want to kill Red or who would want to hurt him. That's what her response to me was.

Q Did you tell detectives that the only thing you said to her was Red was missing?

A I just stated that. That's what I told her.
Q No, actually, you -- what you said was you told her --
A That Red was missing.
Q No. That you thought someone did something to him.
A Yes, I did. We had a conversation. I can't go all the way back in time. This was four years from now.
Q Did the conversation with Diane -- I'm sorry. Did you tell detectives that the conversation with Diane gave you the impression that they possibly had knowledge of or had something to do with the death of Red?
A No. I got suspicious after she had said what she said to me. I got suspicious. I had suspicions maybe she could have harmed or did something because she did make that threat.
Q So the answer is yes?
A Yes. With --
MR. CHISOLM: Just give me one second, Your Honor.
THE COURT: All right.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q All right. You said that you do feel, after watching the video that your memory is refreshed, correct?
A Yes, sir.
Q All right. Do you recall telling detectives that I was the only one that was really cooperating?

impeachment, because obviously credibility is another issue altogether.

So I hope that's helpful.

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: Anything you wish to add to that, Mr. Hilton?

MR. HILTON: No, Your Honor.

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: Yes.

MR. CHISOLM: We're ready, Your Honor.

THE COURT: Okay. Well, all right.

Ready?

MR. HILTON: State's ready.

THE COURT: Good. Let's have the jury.

(Jury in at 2:19 p.m.)

THE COURT: All right, ladies and gentlemen, we will continue with the state's case and the cross-examination of Ms. Williams.

Mr. Chisolm.

MR. CHISOLM: Thank Your Honor.

TAMEKKA WILLIAMS - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q Ms. Williams, during the break is it correct that you had a chance to refresh your memory on your interview on the tape?

A Yes. I'm fine.
Q Could you tell me now, do you recall during this interview telling detectives I was the only one who was really cooperating?
A Yes.
Q Do you recall telling detectives that I was a cool person and I was there for you the day that you found out?
A I remember saying that you were cool. Yes.
Q Do you recall telling detectives that me and Red hung out pretty often?
A No. I don't remember that.
MR. CHISOLM: One second, Your Honor.
THE COURT: All right.
BY MR. CHISOLM:
Q Do you recall telling detectives of an event when Joshua Stokely threatened Red and yourself?
MR. HILTON: Objection.
MR. CHISOLM: Your Honor, I have a wide latitude as to bias and prejudice with the witness.
THE COURT: This is where we had the objection the first time that we took our break. And originally there was no response at that point. And -- I'm going to sustain the objection.
MR. HILTON: Thank Your Honor.
THE COURT: You may proceed.

MR. CHISOLM: One second, Your Honor.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Do you recall telling detectives that if Red wasn't in Haven Oaks, he's be in Azalea Park?

A Sometimes, but he was mostly home.

Q Do you recall telling detectives that Red was in Azalea Park he was likely with Sike?

A Sometimes. Yes.

Q Do you recall telling detectives that on Thursday night, the last time you saw Red he got in the car with Sike?

A Yes.

Q Did you tell detectives that no one saw him since he got in the car with Sike?

A Yes.

Q Do you recall telling detectives that you've never seen me with a weapon?

A Yes.

Q I'm going to try to word this question correctly. During your interview with detectives you were being very helpful and you attempted to give them as many leads as you could for their investigation?

A Yes. I was cooperating.

Q Yes. Did you, in essence, point them in numerous directions -- did you point detectives to numerous male acquaintances of Red that could possibly have involvement in his death?

A Um --

MR. HILTON: Your Honor, I'm going to object again. This is the same --

THE COURT: I'll allow that. You may answer.

A I -- in my mind I had a lot of suspects, but I did -- I wasn't sure. I had a lot of suspects. They said they had a lot of suspects theirself, so --

BY MR. CHISOLM:

Q But you did point them to numerous suspects; yes?

A Probably two, I believe.

Q Okay. During this same interview do you recall not pointing them in my direction?

A No.

Q Do did you point them in my direction during this interview?

A No, I didn't point in any direction. I don't remember. I never said who.

Q You pointed them -- so you can't remember whose direction you pointed them in; is that what you're saying?

A No.

Q After just watching this tape you cannot recall which

--

A I had suspicion about Josh, but like I said, as far as I know, he wouldn't hurt nobody. I mean they both had altercations. We all did. And --

Q Could you tell me more about this?

MR. HILTON: Objection. Relevance.

MR. CHISOLM: She introduced it herself, Your Honor.

THE COURT: Ask another question.

MR. CHISOLM: Okay.

BY MR. CHISOLM:

Q What would be some of your most memorable altercations?

A The altercation --

MR. HILTON: Objection, Your Honor.

THE COURT: Let me hear the rest of the question. Don't answer yet until I have had a chance to rule.

And you may have finished your questions, but I don't think so.

MR. CHISOLM: I'll try to make sure I get this question correct.

THE COURT: Okay. So everybody just hold on for him.

Ms. Williams, okay.

MS. WILLIAMS: Okay.

THE COURT: I've got to rule on it.

MR. CHISOLM: I'm going to re-word that question, Your Honor.

THE COURT: Okay. You're going to withdraw that question and ask another?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay. All right.

BY MR. MR. CHISOLM:

Q And this is along the same lines in regards to you pointing the detectives in -- towards individuals that might have -- that they should investigate.

Could you tell me why you felt detectives needed to go in the direction that you were pointing?

MR. HILTON: Objection.

THE COURT: Sustained.

MR. CHISOLM: Could you give me one second.

THE COURT: Sure.

(Mr. Chisolm confers with Mr. Loy.)

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

THE COURT: Yes.

BY MR. CHISOLM:

Q Okay. You said you didn't point them in any direction?

A No, before it happened the week before Red went missing, and that's why -- that's why. At the time, I figured it would help to see, you know, maybe check him out, also. That was my point. But it happened before -- the altercation. Me and his girlfriend got -- it's a big thing. She, you know, me and her got into it. He and him got into

it.

MR. CHISOLM: One second.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Did you tell the police that this person that you're talking about made any threats toward you or your child?

MR. HILTON: Objection, Your Honor. That's about the fourth time.

MR. CHISOLM: For impeachment purposes, Your Honor.

THE COURT: Sustained.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. All right. Redirect?

TAMEKKA WILLIAMS - REDIRECT EXAMINATION

BY MR. HILTON:

Q Thank you, Ms. Williams. You said on cross-examination you told police that Mr. Chisolm was actually cooperating with police. Did you know what he was telling police?

A No. I He didn't discuss that with me.

Q Did Red, the victim in this case, did he use drugs?

A As far as I know, he did.

Q How about selling drugs. Did he ever sell drugs?

A Yes, sir.

Q Okay, and how long had he been doing that in the Haven Oaks area?

A I think for a month and then we -- He wanted to go get a job, so he did go out and he did go job hunting. That's what I was doing with Diane, we rode together.

Q Back in September 2007, was he still selling drugs at that time in Haven Oaks?

A I didn't see any, so I -- No, I didn't see any drugs.

Q But you're not sure one way or the other?

A No, I'm not sure.

Q Okay. You said -- you said, Thursday night you saw him get in the car with Sike. How sure are you about that date?

A I'm not sure about the date, the day, whatever. But I know it was right before -- he got in the car, but you know, like he came back home because the baby was sick, they child was sick. So he dropped him back off. That's what he told me.

Q Specifically, Thursday, I think that you mentioned. Are you certain it was Thursday or could it have been one other day of the week.

A It -- I'm not sure Wednesday or Thursday, because, like I say, I do remember him bringing the key back. Bringing the key to my house. He was like, I'm just going to cool off for a little while. We going to the country with a friend and stay for a while until he, you know, cooled off.

Q Thank you.

MR. HILTON: No further questions.

MR. CHISOLM: Court's indulgence for one moment, Your Honor?

THE COURT: Of course.

(Mr. Chisolm confers with Mr. Loy.)

TAMEKKA WILLIAMS - RECROSS-EXAMINATION

BY MR. CHISOLM:

Q In regards to the last time you saw Red, you're unsure what night it was, whether it was Wednesday or Thursday?

A It was in the daytime. I remember the daytime. I don't remember the time of day because it's been so long.

Q But you're certain the last person you saw him with was Sike?

A Yes, he got in the car with him.

MR. CHISOLM: I have no further questions.

THE COURT: All right. Is this witness free to leave?

MR. HILTON: She is, Your Honor.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. You are free to go.

Call your next witness, please.

MR. HILTON: State would call Shakara Rose.

THE CLERK: Please raise your right hand, state your full name for the record.

MS. ROSE: Shakara Rose.

THE CLERK: Could you spell your name, please?

MS. ROSE: S-h-a-k-a-r-a R-o-s-e.

((WHEREUPON, Shakara Rose was sworn to tell the truth.)

THE CLERK: Thank you.

SHAKARA ROSE - DIRECT EXAMINATION

BY MR. HILTON:

Q Thank you, Ms. Rose. How are you today?

A Okay.

Q I've just got a few questions for you. Where were you living back in September 2007?

A In Haven Oaks Apartments.

Q Do you remember what apartment?

A No.

Q And did you know a lot of the people from around there?

A Yes, sir.

Q You did. Did you know the defendant in this case, Mr. Donsurvi Chisolm?

A Yes, sir.

Q Did you know the victim in this case, Craig Canady or Red?

A Yes, sir.

Q How did you know Craig Canady?

A I lived close to him.

Q At sometime around September 2007, was he going to move into your apartment?

A Yes, sir.
Q Do you know what that was about?
A He and his girlfriend were arguing and I guess she was putting him out. He asked to stay with me.
Q Let me turn your attention to September 13, 2007 when Red went missing; do you remember that day?
A Uh-huh. (Affirmative response.)
COURT REPORTER: Is that a yes?
A Yes.
BY MR. HILTON:
Q And do you remember a time between the time that Red went missing and the time his body was found, couple day period, do you remember a time in between those days where you heard the defendant say something about where the victim was?
A All I heard was would you like to be in the ditch stinking, too.
Q Would you like to be in the ditch stinking, too?
A Uh-huh. (Affirmative response.)
THE COURT: Is that a yes or a no?
A Yes.
BY MR. HILTON:
Q Where were you at when that conversation took place?
A Sitting on my porch.
Q That was at Haven Oaks?

A Yes.

THE COURT: Is that a yes or a no?

A Yes, ma'am.

BY MR. HILTON:

Q Don't be nervous, okay. The court reporter has to take down what you say. Was there a crowd of people around?

A Yes, sir.

Q And who made that statement?

A From what I remember I believe it was Don.

Q How do you believe that?

A Because he was out there at the time. A couple of people said the comments.

Q And you heard the comments?

A I heard the comments.

Q Thank you. Please answer any questions Mr. Chisolm may have for you.

THE COURT: Cross-examination.

MR. CHISOLM: Court's indulgence?

THE COURT: Sure.

(Mr. Chisolm confers with Mr. Loy.)

SHAKARA ROSE - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Hey, Shakara.

A Hey.

Q All right. Did you say that I said that?

A I didn't say you said that.
Q Okay. Do you recall -- you told detectives this on October 10, 2007; correct?
A Uh-huh. (Affirmative response.)
Q Okay.
THE COURT: Is that a yes?
A Yes.
BY MR. CHISOLM:
Q Do you recall telling detectives you were in Haven Oaks after Red's body was found. Someone asked where was Red. You stated, I don't recall who stated it, but someone said he must in a ditch stinking.
A Okay.
Q Is that what you said?
A Yes.
Q You don't recall who said that?
A No, I don't.
Q And it was a group of people around?
A Yes, a lot of us.
Q A lot of people were around?
A Uh-huh. (Affirmative response.)
Q Would you say about five or 10?
A The whole group from Haven Oaks was there.
Q So about 20, 30 people?
A 20 to 30, yeah.

Q And you have no clue who said that?
A I don't know.
Q So I didn't say that.
A Well, I believe it was you. I do believe it was you, because you were out there.
Q But you told detectives clearly that I didn't say it?
A But you were out there the day. I believe it was you. You were looking for razors and shaving cream.
Q Looking for what?
A Razors and shaving cream.
COURT REPORTER: Razors and?
A Shaving cream.
Q Razors and --
A Yeah. You were out there.
Q I'm not -- Okay. What are the razors and shaving cream?
A I don't know. You were out asking for razors and shaving cream that day.
Q All right.
MR. CHISOLM: One second?
THE COURT: All right.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q All right. You said Red was about to move in with you; correct?
A Uh-huh. (Affirmative response.)

THE COURT: Is that a yes?

A Yes.

BY MR. CHISOLM:

Q Could you tell me why he was going to move in with you?

A Because he and his girlfriend got into a little argument and so he asked if he can move in with me.

Q Okay. Could you elaborate further on -- On your September 16 statement, did you tell detectives that you let Red move in because he felt his safety was in questions?

A No, I didn't say that.

Q Okay. You didn't tell detectives on this same day, you let Red move in because he had a fight with his girlfriend and her cousins Ace and Horse came over?

A Well, the come over or they were supposed to come, or something like that. Supposed to come, yes. He didn't move in with me. He asked if he could come stay with me.

Q He didn't move in with you?

A No, not yet. He just stayed the night, that night.

Q Okay. So you didn't -- you didn't tell detectives that you were expecting him back? That he moved in with you and he brought his food to your apartment?

A That's two different days. Say that again, please?

Q Did you tell detectives that you were expecting Red back because he was staying with you. He left food at your apartment and --

A That's two different days.
Q I'm going off of what you said, Shakara.
THE COURT: Just ask her a question, please, sir.
MR. CHISOLM: Yes, Your Honor.
One moment, please?
THE COURT: All right.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q I just want to clarify something, Shakara. When you made your statement to detectives, your statement was, just to clarify, you did not know who said it?
A No.
Q And four years later you remember?
A I don't remember. I believe -- I think I remember. I mean, it was four years ago.
Q So you don't remember?
A I mean --
MR. HILTON: Objection.
THE COURT: Sustained.
MR. CHISOLM: No more questions, Your Honor.
THE COURT: Very well. All right. Redirect?
MR. HILTON: No redirect, Your Honor.
THE COURT: All right. Is this witness free to leave?
MR. HILTON: She is.
THE COURT: Any objection?

MR. CHISOLM: No.

THE COURT: Very well. You may leave.

Call your next witness, please.

MR. HILTON: State would call Shaquanda White.

THE CLERK: Please raise your right hand. State your full name for the record.

MS. WHITE: Shaquanda White.

THE CLERK: Could you spell your name, please.

MS. WHITE: S-h-a-q-u-a-n-d-a L-a-s-h-a-y White.

(WHEREUPON, Shaquanda White was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

THE COURT: I'm just sort of looking at that microphone. Ms. White, do me a favor, state your name again. This is like a sound stage.

MS. WHITE: Okay. Shaquanda White.

THE COURT: Good. That's good. Good volume.

SHAQUANDA WHITE - DIRECT EXAMINATION

BY MR. HILTON:

Q Thank you, Ms. White. If you can just keep up that volume for us?

A Okay.

Q What area are you living in now?

A Harleyville, South Carolina.
Q And where were you living back in September, 2007?
A In the Evergreen Apartments in Orangeburg?
Q And who lived in that apartment with you?
A Me, my mother, my sister, my brother, my mother's ex-boyfriend, and a friend of ours.
Q Your mother's ex-boyfriend; who was that?
A David White.
Q Is he the one that goes by the nickname Scully?
A Yes, sir.
Q Do you know the defendant, in this case, Mr. Donsurvi Chisolm?
A Yes, sir.
Q How did you know him?
A He was a good friend of the family. I met him when he moved.
Q Did you know his wife, Natalia?
A Yes, sir.
Q And that's her seated in about the third row on the right?
A Yes, sir.
Q What kind of car did they have back in 2007?
A A Dodge Durango, gray.
Q Let me show you what's been marked for identification, State's Exhibit No.6 and ask if you recognize this?

A Yes.
Q Does that appear to be the Dodge Durango that they drove?
A Yes, sir.
MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit 6 into evidence.
THE COURT: Any objection?
MR. CHISOLM: No, Your Honor.
THE COURT: Very well. State's Exhibit No. 6, in evidence without objection. It is a photograph.
(State's Exhibit No. 6, photo, was marked and entered.)
BY MR. HILTON:
Q Did you ever ride in that Dodge Durango?
A Yes, sir.
Q Now, in relation to September 13, 2007, when did you ride in that car?
A I say a week before.
Q Do you remember where you sat?
A Yes, sir.
Q Where was that?
A Passenger seat, front.
Q What kind of condition was the car in?
A Normal condition.
Q What about the passenger seat?

A Normal condition.
Q Did it have any major holes in it or anything?
A No, sir.
Q Did it need to be replaced?
A No, sir.
Q What about the seatbelt, was the seatbelt in the car?
A Seatbelt was fine.
Q And that's the passenger seatbelt you're referring to?
A Yes, sir.
Q And you said it was fine?
A Yes, sir.
Q Do you remember wearing your seatbelt?
A I don't think I wore my seatbelt.
Q Do you remember seeing it in the car?
A Uh-huh. (Affirmative response.)
THE COURT: Is that a yes?
A Yes. Sorry.
BY MR. HILTON:
Q And this is side-tracking just a little bit, what happened with your sister back on September 12, [redacted]?
A She wanted to go to the hospital to see my niece.
Q And was your niece born on that day?
A Yes.
Q And is that kind of how you can tie all these dates together?

A Yes, sir.
Q Okay. Let's talk about the day after your niece was born, September 13, the early morning hours around 3:00 o'clock or so. Do you remember where you were at that time?
A Yes, sir.
Q Where were you?
A Home in Evergreen.
Q Was anybody over there with you?
A Yes, sir.
Q Who was there?
A Sike.
Q And is that the Sike --
A Yes, sir.
Q -- that people have been referring to?
A Yes, sir.
Q That was his nickname?
A Uh-huh. (Affirmative response.) Sike.
Q And around that time on September 13, 2007, did the vehicle depicted in that Exhibit 6 come up?
A Yes, sir.
Q And who was in that vehicle?
A Don and Red.
Q Where was Sike at that time?
A Sitting in the passenger seat, and he got out and talked to Red.

Q Passenger seat of whose car?
A Of his car -- I meant the driver's seat of his car, and he got out and talked to Red on the passenger side of the Durango.
Q And this sounds weird, but you said of his car?
A Uh-huh. (Affirmative response.)
Q Sike was in the --
A His car, and when the car -- when Don truck was pulling up.
Q Sike was in Sike's car?
A Uh-huh. (Affirmative response.)
THE COURT: And that's a yes?
A Yes. I'm sorry. Yes.
BY MR. HILTON:
Q Just so everybody's clear, Sike was in Sike's car when Don was pulling up?
A Yes, sir.
Q Was he ever in Red's car -- I mean, excuse me --
A No.
Q -- was he ever in Don's car?
A No, he never go in it.
Q Now, when Don pulled up in the gray Durango, what did Sike do?
A He got out and talked to Red.
Q Where was Red seated?

A In the front passenger.
Q Of whose car?
A Of Don's truck.
Q Red was in --
A Yes.
Q -- the front seat of this car?
A Yes.
Q Where was Scully at the time?
A Upstairs sleeping in my mother's room.
Q At some point in time, did Don go inside?
A Yes, sir.
Q And do you remember about how long he stayed inside?
A I don't remember. He was in and out. He just went to get Scully and came back out.
Q You said he went to get Sully and come back out. Did they come back out?
A Yes, sir.
Q Okay, and what did they do at that point?
A They left.
Q When you say they left; who left?
A Don, Red and Scully.
Q Okay. Do you remember where each one was sitting in the gray Dodge Durango?
A Yes, sir.
Q Where were they sitting?

A Don was sitting in the front driver's seat. Red was in the front passenger, and Scully was sitting in behind the driver's seat on the left-hand side.

Q What did you do the rest of that night and into, I guess, Wednesday morning; what did you do the rest of that morning?

A Me and Sike went upstairs, with my sister watching movies and fell asleep.

Q Was Sike with you the whole time?

A Yes, sir.

Q When was the next time you saw Scully?

A The next morning when I woke up about 10:30 or 11:00.

Q Did he go to work that next day?

A No, sir.

Q And when I say the next day, later into the day on Thursday; is that correct?

A Yes, sir.

Q So we're still into the 13?

A Yes, sir.

Q How was he acting that day, on Thursday?

A He -- Scully, he stay in his room in bed all day. As I was in the house he was in the bed.

Q Please answer any questions Mr. Chisolm may have for you.

A All right.

THE COURT: Cross-examination.

MR. CHISOLM: Yes.

SHAQUANDA WHITE - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Shaquanda.

A Hi.

Q How you doing?

A Fine.

Q You've known me for a long time?

A Yes, sir.

Q Okay. Do I smoke?

A Do you smoke?

Q Black and Milds?

A Uh-huh. (Affirmative response.)

THE COURT: I'm sorry.

A Yes, sir. I'm so sorry.

BY MR. CHISOLM:

Q I frequently smoke Black and Milds?

A Yes.

Q Does Natalia smoke?

A Yes.

Q In regards to you being inside the vehicle, you're saying it was in good condition, the seat?

A Uh-huh. (Affirmative response.)

THE COURT: That's a yes.

A Yes. Yes.
BY MR. CHISOLM:
Q Now, I understand -- make sure it's a questions.
MR. CHISOLM: I'm sorry, Your Honor.
BY MR. CHISOLM:
Q If you were sitting on the seat would you be able to see burn holes that Black and Milds and cigarettes were potentially in the seat?
A No, sir.
Q Huh?
A No, sir.
Q You said you'd be able to see them if you were on the seat or you saw them?
A No. I'm saying you mean like on the side or the cushion?
Q Just in general if you were sitting on it would you be able to see burn holes on it?
A Uh-huh. (Affirmative response.)
THE COURT: And that is a?
A Yes.
BY MR. CHISOLM:
Q I'm not sure if you understand what I'm asking. If you're sitting on top of them --
A Uh-huh. (Affirmative response.)
Q -- Okay, you wouldn't be able to see them, correct?

A It depends on where they at on the seat.
Q All right. Did you inspect my vehicle closely when you got inside of it or you just got inside --
A Just got inside.
Q -- like a normal person would.
A Yeah.
Q All right. So there's a possibility that you wouldn't see the burn holes that were on the seat because you just got inside the car?
A Well, like I said, if it was burnt, I don't know that.
Q Okay. And you said you do not recall putting on a seatbelt?
A Huh-uh. (Negative response.)
THE COURT: That is a?
A No.
BY MR. CHISOLM:
Q Okay. Were you inspecting the car for a seatbelt?
A No.
Q Is there a chance that you were not trying to put your seatbelt that you were not looking for the seatbelt that you wouldn't really know if it was there or not?
A Can you say that one more time?
Q If you were not looking for a seatbelt --
A Uh-huh. (Affirmative response.)
Q -- and you were not trying to put a seatbelt on --

A uh-huh. (Affirmative response.)
Q -- is there a chance you wouldn't notice whether it was actually there or not?
A I wouldn't notice it.
Q That's what I'm saying. If you're looking for it when you're trying to grab it. Understand you'd see it.
A Uh-huh. (Affirmative response.)
Q And if you're not looking for it, not trying to --
A I wasn't paying attention to the seatbelt.
Q Okay, and on this day you were not trying to put a seatbelt on, you were just getting in the car to get a ride; yes?
A On this day?
Q Well, on that day. I'm sorry.
A On that day, yes.
Q Okay.
A Just get in the car.
Q Now, you're pretty sure of the time Sike came by?
A Yeah. Yes.
Q And are you pretty sure of the time me and Red came by?
A Yeah.
Q Okay. What time would you say you went to sleep on that night?
A I would say about 6:00 that morning.
Q Six?

A Six in the morning. Between 5:00 and 6:00 in the morning.

Q Do you recall telling detectives, and I know it's been a while. Do you recall telling detectives that you went to sleep anywhere from 5:15 to 5:30?

A Uh-huh. (Affirmative response.)

Q Do you recall making two statement to detectives?

A Statements?

Q Well, one written statement and I believe you talked to him one more time?

A Yeah. Well, I was supposed to take a lie detector test, but I got sick and I never took it, and that was my last time to --

Q Okay. But you -- so you're fairly certain you went to sleep somewhere around 5:15, 5:30 in the morning?

A Yes.

Q Was Scully home when you went to sleep?

A Yes.

Q Okay. Do you recall telling detectives that Scully was not home when you went to sleep?

A No.

Q Okay.

MR. CHISOLM: I would like to refresh her memory, Your Honor?

THE COURT: You want to show her a document for the

purpose of refreshing her recollection?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Well, she hasn't indicated she doesn't remember.

MR. CHISOLM: She says she doesn't remember.

THE COURT: You asked her did she remember -- she testified and then responded and then you asked her did she say otherwise. I guess as to that I'll let you show it to her. Pass it please to the --

(Deputy Smith passes document to witness.)

THE COURT: There you go. And you want her just to review this document just to see if it refreshes her recollection?

MR. CHISOLM: Yes.

THE COURT: All right. Just review the document to see if it refreshes your recollection, and when you've finished reviewing it, just -- if you'll just let us know.

(Witness reviews document.)

THE COURT: All right. I think she's finished. You may ask her a question.

BY MR. CHISOLM:

Q All right. Was Scully home when you went to sleep in accordance to what you told detectives?

A No.

Q And this would have been -- so he wasn't home as of

5:15, 5:30. He still was not at the house?
A No.
Q Are you pretty certain you would have known if Scully had come home before that?
A What?
Q Are you pretty certain if he did come home before you went to sleep you would have known he was there?
A Yeah.
Q Did you tell detectives that you've never seen me with a weapon?
A Yes.
Q Did you see Red with a weapon?
A No.
MR. HILTON: Objection, Your Honor.
THE COURT: As to that question, that general question, I'm going to sustain the objection.
MR. CHISOLM: Okay.
BY MR. CHISOLM:
Q How long would you say that Scully and Nay-Nay date -- your mama dated?
A I'd say about a good four or five years.
Q So you know him pretty well. Did you get to know him pretty well?
A Yes, sir.
Q Okay. Have you ever personally known Scully to lie?

A Sometimes.

Q Have you ever known him to lie to get out of a tight situation?

MR. HILTON: Your Honor, I'm going to object.

THE COURT: Sustained.

MR. CHISOLM: Okay.

I have no further questions, Your Honor.

THE COURT: All right. Redirect?

MR. HILTON: No redirect, Your Honor.

THE COURT: Is this witness free to leave?

MR. HILTON: She is.

THE COURT: Any objection.

MR. CHISOLM: None, Your Honor.

THE COURT: All right. Call your next witness.

MR. HILTON: Your Honor, if I may, the next witness is a little bit lengthy. If I may request an afternoon break at this point?

THE COURT: Very well. All right. We'll take our afternoon break. Ladies and gentlemen, please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. Let's take about 20 minutes. Leave your notebooks in your seats. Those that want to smoke, let them smoke.

Thank you.

Counsel, and Mr. Chisolm, hold on for me.

THE CLERK: Thank you.

DAVID WHITE - DIRECT EXAMINATION

BY MR. HILTON:

Q Thank you, Mr. White. Just pull that microphone forward a little bit. Speak up loud for us, okay.

Mr. White, do you go by any nicknames?

A Yes, I do.

Q What is that?

A Scully.

COURT REPORTER: Can you spell it for me, please?

MR. WHITE: S-c-u-l-l-y.

BY MR. HILTON:

Q Mr. White, where were you living back in 2007, September 2007?

A Evergreen.

Q Where is that at?

A Off of Bacon Bridge Road.

Q If I was driving there how would I get there?

A From here?

Q Well, from the Dorchester Road area, where would you turn?

A You take Dorchester, turn on Bacon Bridge, go down about a half-mile or so and it will be on the right-hand side.

Q Okay. And before you were living in Evergreen, where

were you living before that?
A Haven Oaks.
Q In 2007, in Evergreen, who were you living with at that time?
A Fiance, Vanessa White.
Q Was anybody else in the house?
A Yes.
Q Who else?
A Shaquanda, her daughter, Charmonique, (sp) her daughter, her son Onyx.
Q Any friends or anything staying there?
A We used to have Jay come by every once in a while and stay over there.
Q Do you remember Jay's last name?
A No, I do not. Tell you the truth.
Q And who was Shaquanda dating at the time?
A All I know is Sike.
Q Sike?
A Yes.
Q Do you remember where you were working back in '07?
A Yes. I was working at Dickson Masonry (sp).
Q What were you doing for them?
A Laborer.
Q What's that?
A Laborer.

Q Is that like a brick masonry company?
A Yes.
Q Now, do you remember about what time you would get off work back in 2007?
A Probably get off about 4:30, something like that?
Q That's in the afternoon?
A Yes.
Q Where do you work now?
A I work at Lawn O'Green.
Q What is that?
A It a landscaping company.
Q I think Ms. Kelly had a question.
COURT REPORTER: The name of it, again?
MR. WHITE: Lawn O'Green.
BY MR. HILTON:
Q How long have you known the defendant, Mr. Chisolm, in this case?
A Since I moved round to Haven Oaks. About five years, prior to this.
Q You say prior to this; what do you mean?
A I would say like -- I been staying over here five years. Five years around Haven Oaks.
Q Just so I understand, you've known him five years, since 2001 or five years since 2007?
A No. Since 2003 or 2004, somewhere in there.

Q Okay. So you've known him for about nine years or so; is that right?
A Yes.
Q Okay. How long did you know the victim in this case, Red or Craig Canady?
A Probably about a month and a-half. No more than two months.
Q How did you meet him?
A Through Don.
Q I want to turn your attention back to September 12, 2007, that was a Wednesday. Do you remember something happening to Vanessa that day or actually Vanessa's daughter?
A Yes.
Q What happened?
A She had a baby that night.
Q Do you remember calling the defendant, Mr. Chisolm, that day?
A Yes.
Q What was that for?
A Because I had needed a ride to the hospital.
Q You were going to see the baby?
A Yes. Well, I was going to see the baby be born.
Q Do you remember where you were when you called Don?
A Yes. The name of it is -- trailer park behind

Summerville High School -- Hershey Park, I believe. No, no, not Hershey Park.

Q That's all right. You say it was behind Summerville High School?

A Yes. Behind Summerville High School.

Q Did you ever meet up with the defendant that day?

A Yes.

Q Where did he pick you up?

A At the trailer park.

Q That's the one behind Summerville High School?

A Behind Summerville High School. Yes, sir.

Q Do you remember about what time that was?

A It was like after 5:00 or so.

Q Was it after work?

A Yes.

Q Do you remember what he was driving?

A Dodge Durango.

Q Okay. I'm going to show you what's been entered into evidence as State's Exhibit No. 6, and just ask if you recognize that?

A Yes, I do.

Q Is that the Dodge Durango?

A Yes.

Q That's the one he was driving that day?

A Yes.

Q You said he came and picked you up?
A Yes, sir.
Q Did you get in the car with him?
A Yes, sir.
Q Where were you sitting?
A I was sitting in the passenger seat. Front passenger seat.
Q Did you notice anything wrong with the car at that point?
A No, sir.
Q Specifically, with the seat?
A No, sir.
Q Was there any blood on the seat?
A No, sir.
Q Do you remember if there was a seatbelt?
A Yes, sir.
Q Was the seatbelt all torn up or messed up or anything?
A No, sir.
Q Once he picked you up from the trailer park or the mobile home park, where did -- where did y'all go after that; where were y'all going?
A He said he had to go by his mother house to pick up some gumbo seasoning from his mama. Off of Ashley Phosphate Road.
Q Did you know where the defendant was from?

A No, not exactly, because I know him from Haven Oaks.
Q You knew if he grew up somewhere else?
A No.
Q Did you all make it to his mother's house?
A Yes.
Q What did you get when you got there?
A The gumbo seasoning.
Q After that, after you went to his mom's house and got the seasoning, what happened?
A Well, we both had cocaine, powdered cocaine, and after we got to his mother's we started doing it -- we made it back home. I never made it to the hospital. We just rode around and got high.
Q Change your mind about going to see the baby?
A Yes.
Q Do you remember about what time that was?
A I know we rode around until -- we rode around about to 10:00-something I called a white girl I know named Sabrina.
COURT REPORTER: I'm sorry. Her name, again?
MR. WHITE: Sabrina.
BY MR. HILTON:
Q And what was that about?
A Trying to have some fun.
Q Did you end up meeting with her.
A Yes, she had got off around 11:00 o'clock. We met her

at Bojangles on Main Street.
Q When you say we, who is we?
A Me and Don Chisolm.
Q What time did you end up leaving from meeting with her?
A Oh, soon as we got there she got off, we left. We didn't stay around.
Q You say as soon as you got --
A When she got off, she got in her car and followed us and we left.
Q Okay. Where did y'all go?
A We went to Knightsville, to some guy Don know named Bob or something like that.
Q And then y'all stayed with Sabrina for a little while?
A Yes.
Q And about what time did Sabrina part ways with you and Don?
A Probably about 12:00 or so.
Q At that time where did you go?
A He had got a call and had a serve. Had to go get a serve on Nassau (sp) Road.
Q And after you left there where did you go?
A We stopped by the store right there on Dorchester back -- going back toward my house and dropped me off.
Q Did y'all stop anywhere?
A To the gas station.

Q Do you remember what gas station it was?
A The Exxon right on Bacon Bridge and Dorchester.
Q That's the one right near your house?
A Yes.
Q What did you do at the store?
A I got a quart of OE and a pack of Newports?
Q What's OE?
A OE beer.
Q Old English?
A Old English. Yeah. I'm sorry.
Q After you left the Exxon there at Dorchester and Bacon's Bridge where did you go at that point?
A I went home.
Q And home is where?
A Evergreen.
Q Do you know about what time it was at that point?
A After 12:00, 1:00. Between 12:00 and 1:00, something like that.
Q So now you say 1:00 o'clock. Are we into Thursday morning at this point?
A Yes, we are.
Q So this would be on the 13, right. We left the 12, and now we're in the 13?
A Yes.
Q When Don dropped you off, did he come inside or

anything?
A No.
Q Was there a time -- and if I say night I mean that morning, but was there a time that morning that you talked to Don again?
A Yes.
Q What was that about?
A I called him to tell him to tell him he forgot his change when he give me a $20 bill at the gas station, to get a pack of cigarettes. I called him and tell him he forgot his change. He told me he will get it later.
Q Whose phone did you use?
A I use Jay phone.
Q Did you have a cell phone at the time?
A No, I didn't.
Q Was it common for you to use Jay's phone?
A He'll let me use it if I need to use it.
Q After you called Don what did you do?
A Laid down and went to sleep.
Q Okay. Was that on the couch or in the bed?
A In the bedroom.
Q Did you talk to Don sometime after that, that morning?
A Yes. He had called back.
Q Whose phone did he call?
A He called Jay's phone.

Q What did Don want at that time?
A To tell me to come back over. Go get some more.
Q More what?
A Cocaine.
Q What did you say to that?
A I said, whatever.
Q Do you remember about what time that was?
A It was after 1:00. I really ain't too sure about the time, but I know it was after 1:00 sometime.
Q Okay. After he called what happened?
A I was sleeping, and he was tapping at the door.
Q Outside door, bedroom door?
A Bedroom. He came up.
Q When you say, he, who are you talking about?
A Don.
Q Mr. Chisolm?
A Yes.
Q Do you remember who was at the apartment at that time?
A Yes. Jay, Quanda --
Q Quanda is Shaquanda?
A Yes, Quanda. Her boyfriend, Sike, they was outside together.
Q After Don came in and tapped on your door what happened?
A I got up and said, let's ride.

Q You remember what you were wearing?
A I had my shorts on. My slippers, and a t-shirt.
Q What kind of slippers?
A Like house slippers, like.
Q Like bedroom shoes, bedroom slippers?
A No, like something you can wear around outside. Not a bedroom slippers, but slippers you wear outside.
Q Okay. And far as you knew what were y'all going to do at that point?
A Get high.
Q Did you end up leaving at that time?
A Yes, we left out.
Q Who's we?
A Me, Don and Red.
Q Now, you told us what Don was driving earlier that day. What was he driving at this time?
A Dodge Durango.
Q The same Dodge Durango in State's Exhibit No. 6?
A Yes.
Q Is that the same one you said the seatbelt was okay in, the seatbelt was fine in?
A Yes.
Q You said it was you, Don and Red. Did Red ever come into your apartment?
A No, Red ain't come in.

Q Where did he stay?
A He stayed in the front passenger seat.
Q And when you went outside who was in the gray Dodge Durango?
A Red.
Q And where was he seated?
A The front passenger seat.
Q Where did Don get in?
A The driver's seat.
Q Where did you get in?
A Behind the driver.
Q So I got it clear. Don't driving, right?
A Uh-huh. (Affirmative response.)
Q Red's in the front passenger seat?
THE COURT: I need for you to respond for our court reporter, please.
A Oh. Yes.
Q And you were behind the driver in the back seat?
A Yes.
Q Once you got in the car and y'all pulled out the driveway, which way did you go?
A On Bacon Bridge, went towards Dorchester. Made a right on Dorchester and a right on the Orangeburg Road to Azalea Park.
Q Do you remember, was Don talking about anything?

A When we got over by Azalea Park they talking about get a lick, I'm not dressed for that. I'm like, man, I don't want no --

Q What does that mean --

A A lick mean armed robbery.

Q Okay. And who was saying that?

A Don.

Q What was Red doing at that time?

A Just sitting there.

Q You said you weren't dressed for that. What do you mean?

A I wasn't dressed properly. I didn't have no shoes on. I had slippers on. Stuff like that.

Q You were just there for the cocaine?

A Yes.

Q You see any guns at that time?

A No.

Q Now, I think you said you all made it out and you describe the route. When you got back to Azalea Park what was going on when y'all got back to Azalea Park?

A When we got to Azalea Park they were driving around looking for an apartment. Couldn't tell who apartment we was looking for, but I know Don asked Red to call Sike and asked him what apartment the guy stayed in. Red called Sike and asked Sike what apartment the boy stayed in and Sike was

telling him --

MR. CHISOLM: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MR. HILTON:

Q Did you see him make the call?

A Did I see Red make the call; yes, I did.

Q Do you know for certain who he was talking to?

A Talking bout I knew he asked Sike what apartment the boy stayed in.

MR. CHISOLM: Objection. Hearsay.

BY MR. HILTON:

Q Did you talk to Sike at that time?

A No, I didn't.

Q Now, I know times are tough to remember four years ago, but about what time do you think y'all made it back to Azalea Park, roughly?

A Well, it was between 2:00 and 3:00. Something like that. I can't give you an exact time, but between 2:00 and 3:00 probably. Could be between 2:30 and 3:30. I'm not really sure.

Q Okay. Now, when y'all were riding around the Azalea Park neighborhood there --

A Uh-huh. (Affirmative response.)

Q -- had anybody changed seats or everything?

A No.

Q Everybody still sitting in the same place?
A Yes.
Q Had y'all made any stops between Evergreen and Azalea Park?
A No.
Q What were you doing at that time?
A Sitting in the back seat.
Q How many times did y'all end up going around the loop in Azalea Park?
A Twice.
Q David, I want you to take it step by step, okay, and I want you to tell the jury what happened on that second go-around at Azalea Park?
A Well, the second go-around at Azalea Park, that's when I saw Don pull out the gun and shot Red in the head.
Q Was there any discussion?
A No, I look back and I was like, what hell man, you just shot my man. He said, yeah, the mother-fucker. From then my mind went blank. I sitting here, this man sitting over there dead. He kept on talking, but I couldn't tell you exactly what he was saying. My mind is just looking at what's going on.
Q Prior to the shot happening was there any discussion?
A Talking about discussion prior to the shot, no, there wasn't no discussion. No argument. I couldn't tell you why

he even shot my man for.
Q Did you see the flash of the gun?
A Yes, I did.
Q Did you hear it?
A Yes, I did.
Q After the defendant shot the victim, did the victim say anything?
A After he shot him, did the victim say anything?
Q Yes?
A No, he didn't.
Q What happen to the victim after he was shot?
A I lean over and I heard him take a breath like that and lean over to that side and that was it.
Q And you kind of jumped forward a little bit -- you said after the shot occurred, you said the defendant was saying some stuff. Can you go back over that for the jury one more time.
A He was saying, mother-fucker. That was all I heard.
Q Was that all you heard because you went deaf or what?
A I went deaf, I was in shock. I was surprised.
Q Was this part of y'all plan that night?
A No. Not part of my plan, I know that.
Q So you saw the gun; what did the gun look like?
A It was a 22, a 22 long. I know what a 22 long look like. It was a 22 long, long on the muzzle.

Q Let me show you what's been marked for identification as State's Exhibit No. 14, and ask if you recognize this?
A It appears like it looked.
Q Is that the gun the defendant shot the victim with?
A Yes.
MR. CHISOLM: Objection. Leading the witness, Your Honor.
THE COURT: Sustained.
BY MR. HILTON:
Q What does this appear to be?
MR. CHISOLM: I move to strike that comment.
THE COURT: Yes. That was a leading question. I have sustained the objection, ladies and gentlemen. You must disavow that last answer from your mind.
Ask the question.
BY MR. HILTON:
Q What does State's Exhibit No. 14 appear to be?
A That looks like the gun that he shot Red with.
Q After the victim was shot, where did the defendant place the gun?
A On the console right between the seats.
Q Let me show you what's been marked for identification as State's Exhibit No. 13, and just ask if you recognize the areas in this map?
A Yes, I do.

Q And here's an area in blue labeled Azalea Park. Does that appear to be Azalea Park?
A Yes, it does.
Q Mr. White, I'm going to stand over here where the jury can see you, okay. I'll just ask if you will, can you point out the Azalea Park area. And if you need to step up.
A It's right here.
THE COURT: Got to keep your voice up, because you don't have the microphone.
MR. WHITE: Yes, ma'am.
By MR. HILTON:
Q Mr. White, when y'all left Evergreen and went to Azalea Park --
THE COURT: Here a little red dot -- that's a little pointer. There you go.
BY MR. HILTON:
Q When y'all left Evergreen and went to Azalea Park, which way were y'all going in Azalea Park when you were going around the circle?
A We went around here.
Q And you said you did that two times?
A Yeah. The second time we went around, right in this area when the defendant was shot, I mean, shot Red.
Q I'm going to just ask you to take this red pen and put an X there where the actual murder occurred.

A (Witness complies.)
Q Would you put your initials by it?
A (Witness complies.)
MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit 13 into evidence?
THE COURT: Any objection?
MR. CHISOLM: No, Your Honor.
THE COURT: Very well. State's Exhibit No. 13 in evidence without objection. It is a map.
BY MR. HILTON:
Q And just let me ask you, if you know, when you were living in Haven Oaks, did you pay your taxes in Dorchester County?
A Yes, I do.
Q Okay. Azalea Park is also in Dorchester County?
A Yes, sir.
Q After the murder occurred where did y'all go from that point?
A We went up to -- and made a right on 17, and he pulled over -- he pulled over just before he got to Indian Springs, and jumped out. I'm like, man, what are you doing. Putting a man's body on the side of the road like that. I told him you can't do that.
Q Where was that, now?
A Right before you got to Indian Springs. Right there on

17, soon as you make a right at the light in Haven Oaks.
Q Is there a grocery store right in there somewhere?
A Yes. Between BiLo and Indian Springs.
Q And you told him what?
A I said, you can't do that, man. Because when -- I'm sitting there observing the cars coming behind us. He pulled on the side of the road, cars coming behind us and stuff like that. So we headed up Clubhouse.
Q About how far is Clubhouse from BiLo Indian Springs area?
A (No response.)
Q Just guess. I mean, not guess, but about how far is it?
A Well, three, three miles, four.
Q And when y'all got to the Clubhouse Road, which way did you turn on Clubhouse?
A Turned left on Clubhouse Road.
Q And how far did you go down Clubhouse?
A About a mile or so.
Q And what happened then?
A We pulled to the side of the road, and throwed Red's body in the ditch.
Q Who was doing this?
A Don.
Q Where were you at that time?

A In the back seat, still.
Q After the defendant put the victim down in the ditch where did y'all go?
A Went straight down Clubhouse Road and made a left on 165.
Q So you didn't turn around and go back the other way?
A No.
Q Do you remember if the victim had one of those phone earpieces?
A Yes, I do.
Q And what happened to that?
A He threw it out on 165, somewhere.
Q Do you remember roughly what time all this was?
A Could have been 4:00 or somewhere --
Q Are you certain about those times?
A No. It been a long time. I'm trying to remember what time I got home.
Q I understand. Do you remember the defendant, Mr. Chisolm, calling his wife, Natalia --
A Yes.
Q -- during any of that?
A Yes, sir.
Q And what did he tell her?
A He told her that he just got finished putting Red's body in the ditch.

THE COURT: I'm sorry?

A He told her he just got finished putting Red's body in the ditch.

BY MR. HILTON:

Q Now, at some point in time on y'all's way back, did Mr. Chisolm ever give you a story?

A Yes.

Q And what was that story was supposed to be?

A That we rode around, got high. He took me home, him and Ray left and went back towards the high school?

Q Towards the high school. What does --

A Azalea Park, Haven Oaks area.

Q Okay. How far is Haven Oaks, Azalea Park from the high school?

A Two minutes. A minute.

Q It's right around the corner?

A Yes.

Q Before the defendant dropped you off did he make any more stops?

A To the bridge where he tossed the gun out over the bridge.

Q Where is that bridge?

A Bacon Bridge Road.

Q Kind of behind, like, the CVS and stuff back in there?

A Yes.

Q And after he -- after he threw the gun in the swamp there where did y'all go?
A He dropped me off home.
Q And is State's Exhibit No. 14 the gun he threw in the swamp?
A Yes.
Q Let me show you what's been marked for identification as State's Exhibit No. 12. I'll just ask if you recognize this area?
A Yes.
MR. HILTON: Ms. Kelly just gave me a marker that was blown up.
THE COURT: Here.
BY MR. HILTON:
Q Now, you may have given me an answer but I was distracted. Do you recognize this area?
A Yes.
Q What area is this, just generally?
A That's Azalea Park, Haven Oaks, Bacon Bridge. That's Highway 165.
Q Does this map show the area that y'all traveled?
THE COURT: Our jurors are distracted because I am too. Whoever has got something -- something making noise, cause it to stop, please.
I'm going to ask you to go back two questions. I don't

know if you would hear it, but it sounded like a radio and I'm distracted. I'm seeing jurors are also distracted. So we all missed your questions. So take it back about two.

MR. HILTON: I'm going to back up just a little bit. Maybe two or three, I can't remember.

BY MR. HILTON:

Q Does this map depict the area that y'all traveled that night?

A Yes.

Q Okay. And I'm going to give you this highlighter, and we know Haven Oaks and Azalea Park is up in this area?

A Uh-huh. (Affirmative response.)

Q Azalea Park can you kind of plot out where y'all traveled that night. Take your time.

THE COURT: I tell you what, best move that cup of water because that's just -- there you to. That's a tip waiting to happen. There you go.

A When we came out Azalea Park --

Q If you just want to draw it out now and then we'll go back over it --

A Okay.

Q -- and explain. I'm going to hold this map up just like I did the other one. Just ask you, Mr. White, if you'll stand up. Keep your voice up, and tell the jury what all this is?

THE COURT: Mr. White.

A This is Azalea Apartment. That's where -- that's that curve on 17. Got all the way down and got off the road. That's 165. Back up that road. We stopped right here. This is where the bridge is at where he tossed the gun out.

BY MR. HILTON:

Q All right. Now, you said this was Azalea Park. Where did y'all originally stop to throw the body out?

A About right here.

Q Well, originally where you stopped?

A Oh, I'm sorry. Right in there.

Q Right in that area?

A Yeah.

Q And then y'all went down 17-A and where did y'all end up on Clubhouse?

A Right in here.

Q Take this marker and put an X roughly where the body was dumped. Was it on the left side of the road, right side?

A It would be on the right side.

Q The right side. You actually made a mark on the left side of the road.

A I'm sorry.

Q Just put your initials by that.

A (Witness complies.)

Q And I think you said a moment ago is this the bridge --
A Yeah, right there.
Q -- and when Mr. Chisolm threw the gun out, how did that take place; did he get out of the car?
A No, the passenger window, he leaned over and tossed it over the bridge.
COURT REPORTER: I'm sorry, I couldn't hear you?
A The passenger window. He leaned over and tossed the gun out.
MR. HILTON: Your Honor, at this time we would offer State's Exhibit 12 into evidence?
THE COURT: All right. Any objection?
MR. CHISOLM: No, Your Honor.
THE COURT: Very well. State's Exhibit No. 12 in evidence without objection. It is a map.
(State's Exhibit No. 12, map, was marked and entered.)
BY MR. HILTON:
Q Now, at some point in time during all this, did the defendant make a call on the victim's phone?
A Yes, he did.
Q What was that about?
A He had called Sike's number trying to make it seem like it was Red calling him.
Q How do you know that?

A Because he told me that was what he was going to do and I reckon -- when he called Sike's number, I could hear Sike say, hello, hello. Then he hung up.

Q Now, was Red already dead at this point?

A Yes.

Q After he threw the gun out and y'all got back to Evergreen, when y'all pulled up to your apartment driveway there in Evergreen, did you talk to the defendant?

A Yes.

Q And I guess at some point in time you got out the car; is that correct?

A Yes.

Q Where were you standing when you got out the car?

A I was standing by the driver window.

Q And is that when you were speaking to the defendant?

A Yes.

Q And were you able to see into the driver's window at that point?

A Yes.

Q Was there like a light on or anything?

A Yes, he had turned the light on to the switch.

Q And that made the interior light come on?

A Yes.

Q Did you see the passenger seat?

A Yes, I did.

Q What did it look like?
A It had a big spot of blood on it.
Q Where at?
A To the back, back through there.
Q May I ask you to stand up and just use that chair to show the jury where the blood spot was?
A Right in here. A big spot of blood.
Q Was that towards the bottom of the back of the seat or the top of the back of the seat?
A No. It was in the middle seat right there.
Q Do you remember about what time that was when you got home.
A No, but it was close to 5:00 because it was not too much longer before my boss man came and picked me up to go to work.
Q Did you end up going to work?
A No, I didn't.
Q When you got home what did you do?
A Crawl into bed.
Q Were you pretty shaken up by all this?
A Yes, I was.
Q Is that why you didn't go to work the next day?
A Yes.
Q Now, we're still talking about early Thursday morning, right. All these times you're referring to, is that early

Thursday morning?
A Yes, sir.
Q Okay. Now, was there a time, either later on that Thursday or the next day or so when Don came by again?
A That afternoon, I believe. That Thursday afternoon.
Q And where did he meet with you at that time?
A He came to my apartment.
Q Did you call him over there?
A No.
Q Did you even want to talk to him?
A No, at the time. No.
Q When he got there what did he do?
A He was just talking about he was trying to find a seat for the truck.
Q Had he found a new seat yet.
A He didn't tell me if he did or not. He said he was trying to find one.
Q Did he have a new seat in the car at that time?
A No, he didn't.
Q Did you see the passenger seat of the car at that time?
A Yes, sir. He showed me the hole he cut out the seat.
Q Are we still talking about the Dodge Durango in State's No. 6?
A Yes.
Q And you say he showed you a hole he cut out the seat;

what do you mean by that?

A Well, where the blood stains was on the seat. That's the hole he cut out, cut around it to get rid of the big spot of blood. The blood stain.

Q When you say he cut a hole out of the seat, do you mean that he just -- like made a puncture? I mean, describe that hole to us?

A This right here, there was nothing here. The only thing was here was the hole and it was a big empty spot.

Q I think you said he had a cover on the seat, right?

A Yes.

Q What kind of cover was that?

A All I know was it was gray and black.

Q Let me show you what's been marked for identification as State's Exhibit No. 7, and ask if you recognize this?

A Yes, sir.

Q Does that appear to be the cover?

A Yes, sir.

Q Is that an accurate picture of the cover that you saw when he came back to your apartment the next day or so?

A Yes.

MR. HILTON: Your Honor, we'd offer State's Exhibit No. 7 into evidence.

THE COURT: All right. Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. State's Exhibit No. 7, in evidence without objection. It is a photograph.

(State's Exhibit No. 7, photo was marked and entered.)

BY MR. HILTON:

Q Did you notice anything about the seatbelt, as well?

A Yeah. It wasn't there.

Q What do you mean it wasn't there?

A It was gone. It was cut off.

Q You mean there was no seatbelt that you could see?

A No.

Q Did he say anything about being quiet or keeping your mouth shut?

A Yes, sir.

Q What was that about?

A Tell me to be quiet, ain't nothing going to happen.

Q Did he ever say what he was going to do or what he did with the old seat?

A He told me he torn it in pieces and toss them in different places.

Q Now, just so we're not confused, is that the same time that he showed you the seat or was that another time?

A Another time. Probably Friday or something.

Q Did he tell you what he did with the victim's phone?

A Throwed it away.

Q How about the seatbelt?
A All he told me was he throwed the stuff away. I didn't know where or when.
Q Do you remember a time around late September or so when detectives came to talk to you?
A Yes.
Q Is that the first time that you had talked to police?
A Yes, I believe so.
Q And what story did you give them at that time?
A The story we made up we ride around, we got high, they dropped me off home and they went about their way.
Q I think there was a time subsequent to that where you met with police, again, is that right?
A Yes.
Q And what story did you give them that second time?
A The same one.
Q And both of those were the story that Don told you?
A Yes.
Q And when I say Don I mean Mr. Chisolm?
A Yes.
Q Why are you coming forward now with a different story?
A Because at the time he was on the street. You know, my family stay out there and I see how he did this man here. No problem doing it to me and my family member.
Q Okay.

A So when I found out they caught him, I call my attorney, and I came to y'all.

Q Why did the defendant shoot the victim?

A I could not tell you. There was no arguing or nothing. I couldn't tell you why he shot him.

Q Do you have any sort of deal with the prosecution or the police department, Sheriff's Office --

A No.

Q -- about testifying?

A No.

Q And you're actually charged in this case, as well?

A Yes, I am.

Q What are you charged with?

A Accessory after the fact.

Q Are you guilty of that?

A Probably I am. I know what happened and I didn't say nothing, but I didn't have nothing to do with it.

Q Now, I know several times you've made reference, but do you see Mr. Chisolm in the courtroom today?

A Yes, I do.

Q Can you point him out to the jury?

A Sitting with the brown suit on.

Q And is the guy with the brown suit on the guy that took this gun, State's Exhibit No. 14, put it to the victim's head and pulled the trigger?

A Yes, it is.
Q He's the one that threw State's Exhibit No. 14 into the river?
A Yes, sir.
Q And he's the one that cut out his seat --
A Yes, sir.
Q -- and showed you?
MR. CHISOLM: Objection. Leading, Your Honor.
THE COURT: Sustained. Please do not lead.
BY MR. HILTON:
Q And Mr. White, you don't have a spotless past do you?
A No, I don't.
Q What kind of trouble have you been in before?
A I got distribution of crack cocaine, possession of stolen good, aggravated assault. Rest of them is misdemeanor stuff.
Q Okay.
MR. HILTON: Bear with me one second.
THE COURT: Okay.
MR. HILTON: Please answer any questions Mr. Chisolm may have for you.
THE COURT: Cross-examination.
MR. CHISOLM: Can I have a second?
THE COURT: Yes, certainly.
(Mr. Chisolm confers with Mr. Loy.)

DAVID WHITE - CROSS-EXAMINATION

BY MR. CHISOLM:

Q You say you do recall the 9/17; you do recall your two interviews with detectives, correct?

A Yes, I do.

Q Do you love your mother?

A Yes, I love my mother.

Q Okay. Would you say your mother -- would you say you and your mother have a good relationship?

A Yes.

Q Do you and your mother communicate well with each other?

A Sometimes we don't.

Q Okay. Would you say you are comfortable talking to your mother?

A Yes, I am.

Q Do you think the mother and child relationship is built upon trust?

A I don't know.

Q You don't know if your relationship with your mother is built upon trust?

A I don't know.

Q Okay.

A Today, who can you trust.

Q Do you believe you should be able to trust your mother?

A Yes, I should be able to trust my mother.
Q Okay. Do you believe that your mother should be able to trust you?
A Yes.
Q Okay. Would you outright lie to your mother's face?
A I'm going to say I have before. I'm not perfect.
Q Okay. So if you would lie to your mom, the person who raised you would you say you would lie to a complete stranger?
A Yes.
Q So you're admitting that you are a pathological liar?
A No, I'm not admitting I'm a pathological liar. I'm telling the truth that went on. Everybody lied before. I ain't the only person to tell you they never lied before.
Q But you're saying you'd lie to anyone, and one person you loved, right?
A Yes.
Q Okay. Would you lie to the police, too.
A I have.
Q Okay. So you'd pretty much lie to everyone?
A Not everyone. I'm not lying about what's going on.
Q But you lie to every one you know. You lie to your mother and you lie to the police, correct?
A Yeah.
Q When you were interviewed on your first interview,

9/16/07 --
A Yes.
Q -- were you informed of your rights?
A Yes, I was.
Q And you were told you have the right to remain silent?
A Yes, I was.
Q And you chose to give up that right, correct?
A Yes.
Q Okay. Were you told you had the right to an attorney?
A Yes.
Q And you chose to give up that right as well, correct?
A Yes.
Q During this interview did detectives try and make you feel that everyone was pointing the finger at you?
A No
Q The detectives did not tell you that?
A No.
MR. CHISOLM: I have tapes that I may need to play, Your Honor.
THE COURT: Okay.
MR. CHISOLM: I'm going to finish my line of questioning.
THE COURT: All right.
BY MR. CHISOLM:
Q During this interview did detectives attempt to put a

lot of pressure on you to give them information on a crime you may have known about?

A Yes, they do.

Q Okay. Did they constantly bombard you with accusations and questions for upwards to an hour or so?

A Yes.

Q And for an hour or so you answered all of their questions in spite of the pressure?

A Yes.

Q And you did this of your own free will, giving up your silence and your right to a lawyer, correct?

A Yes.

Q Okay. Did you tell detectives that I came by as I always did to talk business or just come around. I always come around for various reasons?

A What day you came around?

Q In your original interview when you were asked all these questions that are going to pertain to the night within question? When detectives why I came by, did you tell them I normally stop by at any time?

A One time you came by --

Q The night in question, Scully, 9/13. The day you said everything happen. When they asked you about this date, did you initially tell them that I always come by, I'm known to stop by random times?

A Yes.
Q Okay. Did you tell detectives at least twice that no calls were made on anyone's cell phones that you were aware of on the night in question during this interview?
A Did I tell them there were no calls made on nobody cell phone?
Q That you saw no one make any phone calls?
A I don't -- four years ago what I told them in that interview room --
Q Yes.
A -- what I told the interview room or what I told them now. Are you talking about the call?
Q I'm asking you -- yes. Did you tell them that you didn't see anyone use a cell phone or phone calls happen on that date?
A I don't know what I told them on that date about that phone call stuff.
Q So you can remember everything from three days before your interview --
A Uh-huh. (Affirmative response.)
Q -- but you can't remember three days after?
A Three days after?
Q I'm mean three days after everything was supposed to happen. You can remember 9/13, but you can't remember 9/16?
A Are you talking about 9/16 I -- what happened on 9/16?

Q That was your interview?
A Uh-huh. (Affirmative response.) And 9/16 what now, the day of the interview?
Q 9/13 is the day you just told everybody the day this happened?
A I know, but I'm saying what you're trying to say is what I told them you're trying to say I didn't.
Q Okay. Are you telling me that you --
A What day are you talking about that I tell them what I supposed to said.
Q I'm asking you, if on your first interview --
A Uh-huh. (Affirmative response.)
Q -- on September 16, did you tell detectives no one used the phone that you were aware of?
A I can't remember if I told them that.
Q Okay. Did you tell detectives that you didn't see a gun on either me or Red?
A Yes, I did.
Q Okay. Did you tell detectives that we had no plans, that we were just riding around to avoid Shaquanda because we were doing coke?
A I didn't say it was to avoid Shaquanda, but I know I didn't call her name. I didn't tell them about Shaquanda, but I told them we were riding around doing coke. Yes, I told them that.

Q And you didn't tell them we were trying to avoid Shaquanda because you didn't want her to see us doing coke?
A No. We rode -- you came to get me. I ain't said nothing about Shaquanda. I don't believe I did.
Q Okay. Did you tell detectives that we made no stops and we, as in me and Red --
A Uh-huh. (Affirmative response.)
Q -- dropped you off?
A Yeah.
Q Did you tell detectives on this date that had never seen me at Clubhouse?
A Never seen you at Clubhouse?
Q On 9/16, your interview, did you tell detectives --
A Uh-huh. (Affirmative response.)
Q -- when they questioned you, have I ever been in Clubhouse. Did you tell detectives you've never seen me in Clubhouse?
A I don't remember that question.
Q Okay.
MR. CHISOLM: Your Honor, I want to play this.
THE COURT: Okay.
BY MR. CHISOLM:
Q Did you tell detectives the last time you were in Clubhouse was nine months prior to the interview?
A (No response.)

Q Is that what you said?
A Excuse me?
Q The question.
A What --
Q Did you tell detectives that you hadn't been in Clubhouse for nine months prior to the interview?
A I don't know if I did or not.
Q And despite you answering all these questions detectives continued to bombard you, correct?
A Uh-huh. (Affirmative response.) Yes.
THE COURT: Is that a yes?
A Oh, yes, ma'am.
THE COURT: That's okay.
A I'm saying when he asking questions about something that happened four years ago, and right now I know when I gave my first -- only thing interview, all of it was lies, and I'm saying I was admitting to that. But he asked me questions about something I don't really remember nothing about that.
THE COURT: I understand. When you respond what ends up happening --
A Yes, ma'am.
THE COURT: -- when we communicate is that we go uh-huh and uh-huh, and we know what we mean, and we can probably interpret what you mean. The problem is in court my court

reporter is taking down your responses.
A Okay.
THE COURT: And what happens is is it causes her to need to interpret, and so what we ask folks to do is to respond with their voice with an answer, just to stop my court reporter from having to interpret. It happens, I think it's happened with every witness. It happens because it's the way people communicate. So that's the reason that I stopped you just because I need you to respond with your voice.
A Yes, ma'am.
THE COURT: Thank you so much.
BY MR. CHISOLM:
Q Would it be safe to say during this -- during this interview you were getting a little agitated with detectives constantly questioning you?
A Yes.
Q Did you tell detectives toward the end of this hour long interview, I quote, I done told y'all 100 times what happened. Three of us came back and they dropped me off?
A Yes, I think I do remember something like that. Yes.
Q Did you tell detectives and I quote, nothing happened in that truck when I was in there?
A Yes.
Q Were you once again interviewed on 9/24/07?
A That was my third interview?

Q Second interview.
A Second one.
Q Yes.
A Yes.
Q And once again, was this interview done of your own free will?
A Yes, it was.
Q You were read your right again, correct?
A Yes.
Q Did you, once again, give up your silence and your right to an attorney?
A Yes.
Q Okay. During this interview, did detectives make you feel as though a warrant for your arrest could be easily obtained with little or not evidence?
A Yes.
Q Okay. Did detectives attempt to make you feel as though you needed to decide if you wanted a lessor charge or a homicide charge?
A Yes.
Q Did detectives once again continue to bombard you with accusations and questions in regards to the morning of September 13, for upwards of an hour or more?
A Yes.
Q Okay. Did detectives send your mother into the

interview room in an attempt to force -- I'm sorry.
Did detectives send your mother into the interview room?
A Yes.
Q Okay. And your mother does know one of the detectives, correct?
A I don't know if she know them.
Q So Det. Walsh -- all right, so during your 9/24 -- after your second interview --
A Uh-huh. (Affirmative response.)
Q -- after Det. Giglio walked out of the interview room, I believe this should be before your mother walked in. Do you not recall Det. Walsh telling you she knows your family?
A (No response.)
Q She's known your family all of her life?
A (No response.)
Q She says she's aware that you talk to your mom, and that's how she knows you know her family and she wanted to help. She didn't think you did it.
A I don't recall. I don't remember that.
Q You don't remember if Det. Walsh knows your mother?
A My mother ain't never told me she knew them.
Q Okay. And your mom came into the interview room --
A Uh-huh. (Affirmative response.)
Q -- we've established that. Okay. During this second interview did a second set of detectives get cycled in, Lt.

Van Doran and another detectives.

A Yeah. I'm not sure of his name.

Q Okay. And did these two detectives attempt to put more pressure on you and ask you more questions?

A Yes.

Q And though the magnitude of this pressure and accusations from detectives and also your mother, because she did come in and ask you questions, yes?

A Yes.

Q Okay. Actually, I want to be specific with you.

MR. HILTON: I object to what mom came in and asked.

THE COURT: Let me hear the whole question.

MR. CHISOLM: Okay. His mom just asked if he knew --

THE COURT: No, no, no. Let me hear your question to him and I'll rule on it.

BY MR. CHISOLM:

Q Did your mom ask you if you knew anything?

THE COURT: The objection is?

MR. HILTON: Hearsay.

THE COURT: Sustained.

BY MR. CHISOLM:

Q After your mother came into the interview room do you recall saying, and I quote, I don't know nothing. Don't you think if I did I would tell them so they would leave me alone. I'm tired of them coming and looking for me. This

was said to your mother.
A Yes.
Q Do you recall that. And that was a lie to your mother?
A Yes, it was.
Q And all of this questioning, correct, was done of your own free will?
A Yes.
Q I didn't force you to go into these interviews, did I?
A No, but you made up the story.
Q So you're saying you were following my -- in the presence of detectives, who could secure your safety, in the presence of your mother, who knew one of the detectives, and this is your second interview. You've had two opportunities to talk to detectives. Are you saying that I forced -- you didn't feel comfortable to talk to detectives?
A I didn't feel comfortable because you was still on the street.
Q Wouldn't you think if you said something to detectives at that time that they would come get me off the street?
A Well, while they're looking for you, you must know I said something, right, and that's when you had an opportunity to do something to my family.
Q So on September 24, I wasn't in town, is what you're saying?
A I don't know where you was at. Where was you at

September 24?

Q Haven Oaks.

A Oh.

Q Do you recall on this second interview Det. Walsh asked you specifically, are you scared, Don?

A And I told her no.

Q Could you tell them that you were?

A I'm telling right now.

Q I don't understand. You're not scared of me. You're saying you were scared of me. You were with detectives, you were with your mother. You had all the protection that you needed. You -- I don't understand. Sorry. We'll continue.

MR. HILTON: I'd ask that he be able to answer the question.

THE COURT: Do you remember what the question was?

A Talking about was I scared of him.

THE COURT: You may respond to the question, if you wish. There is no objection interposed. You may answer the question.

A Yes. I might have told the police I wasn't scared of you, but after I saw what you did I'm death afraid of you.

Q Okay.

A Is that the question --

THE COURT: That's responsive. You may proceed.

BY MR. CHISOLM:

Q And did you, once again, during this interview confirm that neither me nor Red, that you didn't see either me or Red with a gun?

A I told them I didn't know.

Q Did you confirm again during this interview that we left to avoid Shaquanda because we were doing drugs?

A Like I said, I don't know who called Shaquanda's name. I don't remember, but I know we left to get high. You already asked that question once.

Q I'm asking in reference to the second interview.

A Oh.

Q I asked you whether or not -- you had two interviews, so I'm asking you if you told them this again. You verified your story is what I'm trying to confirm.

A Okay.

Q Did you tell detectives, once again, that no stops were made, no one got out, and that we, as in me and Red, dropped you off?

A Yes.

Q Did you tell detectives, once again that we did not to go Clubhouse?

A Yes, I did.

Q Did you have to repeat yourself numerous times over this hour or more interrogation?

A Yes.

Q Okay. Did you say during this interview, and I quote, I told you everything I know. I don't know what else I can tell you?

A Yes.

Q Did you say, and I quote, I didn't see anybody shoot anybody.

A Yes.

Q Did you say once again during this interview charge me or let me go. I had nothing to do with this?

A Yes.

Q Did you say I have nothing to worry about. I don't know nothing. I didn't do nothing. I'm telling the truth.

A Yes.

Q And what you're saying is -- when I gave you a story. You said I just gave you a story -- You said that I gave you a story to just say that we were riding around to get high and we just rode in circles?

A Yes.

Q So I didn't give you all this extra information that you were putting out, I didn't give you these quotes?

A What are you talking about?

Q I don't know nothing. Charge me or let me go. I don't have anything to worry about, I'm telling the truth. I'm not scared of Don. Was all this extra part of this story I supposedly programed you to say?

A No.
Q So you spent an extra hour and a-half just giving them, just giving them a story?
A Yes, I did.
Q Would you say that you withstood at least 3hours in interrogations two separate time, still combined into 3 hours, because you were extremely gifted in lying?
A I won't say that.
Q And you say you have been arrested, yes?
A Yes.
Q Or convicted, I'm sorry. And this was a drug charge, yes?
A Yes.
Q Could you tell me about that?
MR. HILTON: Objection.
THE COURT: Sustained.
MR. CHISOLM: Give me one second.
THE COURT: All right.
(Mr. Chisolm confers with Mr. Loy.)
THE COURT: We'll take a comfort break ladies and gentlemen. I'm not sure how much longer we'll be going today. But anyway, step to your jury room. Do not discuss this matter. Do not allow any one to discuss it with you. Y'all knock on the door when you've had your comfort break. Please step to your jury room.

argument whether he admits those videos into evidence or not.

THE COURT: Okay.

MR. HILTON: Thank you.

THE COURT: Very well. And you make that argument on the basis that the prior inconsistent statements come in for impeachment, but also substantively, as well?

MR. HILTON: That's correct.

THE COURT: Okay. Got it. All right. Thank you.

Anything from the defense before we bring the jury out?

MR. CHISOLM: What was that?

THE COURT: Anything before we bring the jury out?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well, let's have the jury.

(Jury in at 9:20 a.m.)

THE COURT: All right. Good morning ladies and gentlemen. At this time we will continue with the state's case and the cross-examination of Mr. White.

DAVID WHITE - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q If you owed a debt to society would you own up to your guilt and pay your debt?

A Yes.

MR. HILTON: Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Did you tell detectives that your highest grade of education was eighth grade?

A Yes, I did.

Q Tell me do you know and understand your constitutional rights?

A Yes, I do.

Q Could you tell me what your Fourth Amendment Constitutional rights are?

MR. HILTON: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Is it likely that you would know if you were unlawfully arrested?

MR. HILTON: Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Did you speak to your attorney before you talked to detectives on November 16th?

A No, I didn't. November 16, are you talking about the (inaudible). Yes, I did.

Q Did you authorize your attorney to speak to the solicitor in reference to you making a statement?

A. Yes, I did.

Q To your knowledge, did the two attorneys speak?

A Are you talking about the solicitor and my attorney?
Q Yes.
A To my knowledge, yes.
Q Did your attorney then advise you to make a statement?
A No. They didn't speak before he came to speak to me. They spoke after I spoke to him. After I spoke to my attorney, then I made by statement, then they asked if I would come in and make a statement. Yes.
Q Say that again, for me.
A Well, my attorney came to me. I told him what happened. He asked me did I want him to take it to the solicitor, I said yes.
Q After making a statement and after leading officers to the alleged but never proven murder weapon, you said was involved in this crime, was your charge lowered?
A Yes.
Q Were you immediately given a lower bond, as well?
A I got a bond, yes.
Q All right. Did you bond out of jail?
A Yes.
Q Were you offered immunity for your testimony today?
A No. You're talking about offered a plea?
Q Immunity?

A I don't understand what you're talking about?

Q When you testified earlier, Mr. Hilton asked you if you were given immunity for your testimony today. Did you not understand the terms of why you were coming to testify today?

A Yes.

Q All right.

MR. CHISOLM: Give me one second, Your Honor.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Did they make any type of deal with you?

A For my testimony today?

Q Yes.

A No.

Q So you willingly just came?

A Yes.

Q All right. So when you testified earlier that you were given immunity, that was incorrect, that was false?

A What did I say when you were talking about testifying --

Q Yesterday.

A I didn't. They didn't give me no immunity. I told you that.

MR. CHISOLM: Can I ask for something to be played back, Your Honor? There's a portion of his original testimony

his testimony today is not being used against him is what I'm trying to explain.

THE COURT: He's explained exactly what the situation is and you can ask about that. Okay.

MR. CHISOLM: Okay.

THE COURT: All right.

MR. CHISOLM: All right.

MR. HILTON: I would just ask him to refer to it as a proffer agreement, because that's what it is. Immunity, I think, can mean something else.

THE COURT: Very well. Yes.

(Jury in at 9:29 a.m.)

THE COURT: All right. Yes, sir, you may continue.

DAVID WHITE - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q Were you offered a proffer agreement for your testimony today?

A Yes.

Q Can you explain to us exactly what that means as it was explained and understood by you?

A That my testimony here today would not be used against me for my charges.

Q So basically nothing you say here today can be used against you later, correct?

A Yes.

Q So you can basically say anything you want on the stand with no worry of repercussion, correct?

MR. HILTON: Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Did you testify yesterday, that your first two interviews you were lying?

A Yes.

Q So when you came forward after speaking with your attorney you were telling the truth, correct?

A Yes.

Q And this was only two months after the alleged incident, so your memory was fresh, correct?

A Yes.

Q Did you, during your 11/16 interview, tell detectives that you put everything on the table and that's it, pretty much saying you had no further information?

A That was the second interview?

Q No.

A First --

Q No, fourth, your fourth interview when you said you were telling the truth. Did you tell them -- after the interview --

A I told them everything that happened and yes, that was it.

Q You told them that was it, I have nothing else to put on the table?
A When they personally asked me I told them the truth about it. Yeah.
Q You testified earlier that you saw me put a gun to the deceased head and shot him, correct?
A Yes, I did.
Q On 11/16, did you tell detectives that you only heard a pop and saw a spark and that you were looking at a building?
A I saw -- you shot him. I saw the spark and I saw you shot him.
Q Did you tell detectives on 11/16 that you only heard the pop, saw a spark and that you were looking at a building?
A I saw you shot him.
Q Okay. You testified earlier -- I'm sorry. You testified yesterday that I said, yeah, mother-fucker, afterwards, correct?
A Yes, I did.
Q On 11/16 did you tell detectives twice you weren't sure what I said, and it was possibly something about Red's cousin?
A That was the second interview?
Q Your final interview.
A Yes, I told them something about I asked you why you

shot him and you said something the mother-fucker and I know it was something about the family or something. Yes, I did.

Q I'm sorry. The question is, on 11/16 did you leave out what you just said yesterday, the yeah, mother-fucker part, and tell detectives that you weren't sure what I said and it was possibly something about Red's cousin.

A I told them after you said what you said, I told them I wasn't paying no attention anymore.

Q Okay. You testified earlier that I asked to pull off the road, around the corner from Haven Oaks area and after some communication it was decided to go to Clubhouse, correct?

A You say you asked -- repeat that question, say that question one more time?

Q You testified earlier that I started to pull off the road, basically around the corner from Haven Oaks area and after some conversation it was decided to go to Clubhouse, correct?

A You didn't stop, you did pull off the road.

Q Okay. And what how did I get to Clubhouse?

A There was a conversation I told you to take the road and go to Clubhouse.

Q Okay. On 11/16 did you tell detectives you didn't know why the Clubhouse area was chosen and you didn't know why there was no talking after the shooting?

A I told them that I didn't know --
Q Why you didn't know why the Clubhouse area was chosen and that there was no talking after the shooting?
A I remember telling them that I told you to go to Clubhouse. I remember telling them that.
Q You told them that --
A Yes, I did.
Q Did you testify yesterday that I threw Red's earpiece out the window?
A Yes, I did.
Q On 11/16 did you tell detectives that you didn't know what happen to the earpiece?
A You said on 11/16?
Q Yes. Every question that I'm asking you is towards the last interview. The one that you said you were telling the truth.
A Yes, I was telling the truth.
Q Okay. On 11/16 did you tell detectives you didn't know what happened to the earpiece?
A I told them you throwed it on the side of the road.
Q Okay. You testified yesterday that I called before I came by on Jay's phone --
A Uh-huh. (Affirmative response.)
Q -- and was planning to get more coke, correct?

A Yes.
Q Did you, on 11/16 tell detectives that me and Red just showed up unannounced?
A I don't remember if I did that or not.
Q Okay.
A I don't remember if I did that or not.
Q Okay. I'll refresh your memory in a second. Now, I want to get this all -- I want to get this all in, so bear with me for one second. You testified yesterday that I had a conversation with my wife, that I made a call to Sike after Red called Sike, and I gave you numerous instructions on what to say to the police and what I was going to do and should be done next, correct, that's what you testified to yesterday?
A I know I testified to yesterday that you collaborated and I went along with it. That you called your wife on 165 and told her you just got finished throwing Red body on the side of the road, in the ditch.
Q All right. So I talked to my wife; that's a yes?
A Yes.
Q Did you testify yesterday that I called Red --
A Sike.
Q -- I called Sike off of Red's phone --
A Yes.
Q -- and I started trying to talk to him, I guess?

A No, you didn't talk to him.
Q But I called?
A You didn't say nothing at all.
Q But I talked to you about Sike, about me calling Sike?
A Yes, you did talk to me.
Q So we did have a conversation about me calling Sike?
A Yes, we did.
Q Thank you. I gave you instructions on what to say to police -- oh, I'm sorry. I make a story for you, yes?
A Yes.
Q And was I talking about plans on what should be done next; is that what you testified to yesterday?
A I testified the story that we were going to use, if they come to us, the story that you gave that me that we got high and you and Red dropped me off and went on your way.
Q Okay. Did you on 11/16 tell detectives that after the shot as fired no conversation went on in the truck, and if I said something you were not listening.
A I told them I heard you say mother-fucker and say something else and I wasn't paying attention because I was looking at his man dead right here.
Q There wasn't conversation?
A That was after the fact. We were on 65 and you dropped me on home.
Q So did you tell detectives, they asked you, did y'all

have any conversation in this truck?

A From Haven Oaks to Azalea Park, no, but after we got -- after you got me on home, yes.

Q So you told detectives all this in that interview?

A I can't remember how the interview went.

Q I'll remind you.

MR. CHISOLM: Your Honor?

THE COURT: Yes.

MR. CHISOLM: I would like to play the tape.

I redacted it. It's in the exact order with the questions I just asked him. Go snippet by snippet.

THE COURT: All right. Any objection?

MR. HILTON: No, objection.

THE COURT: Very well.

(Pause for video setup.)

MR. HILTON: Your Honor, I hate to do this, but maybe we can get the jury to step out while we figure out what's going on.

THE COURT: Sure.

Very well. Step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. We just need to get the tape up and just make sure it's -- we all know what's on it.

(Jury out at 9:39 a.m.)

(Pause to set up video.)

MR. HILTON: I just used this this morning and it was working fine. So I'm not sure if it's the tape or what. I'm going to try to play another tape and just see.

THE COURT: Okay.

(Pause to set up video.)

MR. HILTON: Okay, Judge, I think we're ready.

THE COURT: Okay. Do you want to review these tapes or are you all right?

MR. HILTON: I'll take Mr. Chisolm's word that it is the 16th interview.

THE COURT: Okay.

MR. HILTON: I don't have a problem with that.

THE COURT: Okay. Very well.

Okay, let's have the jury back, please.

(Jury in at 9:45 a.m.)

THE COURT: All right. You may proceed with your cross.

(Video plays.)

THE COURT: You just want -- stop a second.

(Video stops.)

THE COURT: Do you just want -- do you just want all of these statements to play?

MR. CHISOLM: Yes, Your Honor. All right.

(Video plays.)

(Video stops.)

MR. CHISOLM: There's something I've got to push

forward.

THE COURT: Okay.

MR. CHISOLM: I apologize.

THE COURT: Okay.

(Pause to rewind video.)

MR. CHISOLM: Your Honor, I don't want to mistakenly introduce --

(Off the record conference with Mr. Hilton, Mr. Chisolm and Mr. Loy.)

MR. CHISOLM: Your Honor, I duly apologize, but we have no way of being able to hear it like that. I know it's an inconvenience, but could we possibly ask the jury to step out one more time so --

THE COURT: We've got to see if we can get our technology straight. If not, we've got an old TV with a VCR. I apologize for our technological challenges this morning. I'm just glad I'm not having to fool with it, because I know y'all would never hear it or see it, but let us work on it again. Y'all might as well be at ease having a cup of coffee while we struggle with it. Hopefully, while we get our little glitches fixed we'll have y'all come right back. Anybody that wants to zip out and smoke you can do that, too. Thank you guys.

Of course, do not discuss this matter or allow anyone to discuss it with you.

(Jury out at 9:49 a.m.)

THE COURT: Do you need to take a quick break. All right, run on out.

(Court in recess for short break at 9:50 a.m.)

(Court in session after short break at (9:58 a.m.)

(Jury in at 9:59)

THE COURT: All right. We'll try again.

(Video plays.)

(Video stops.)

THE COURT: You may proceed.

MR. CHISOLM: Thank Your Honor.

DAVID WHITE - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q You said your memory four years ago was accurate, right?

A Uh-huh. (Affirmative.)

THE COURT: That's a yes?

A Yes. I'm sorry.

THE COURT: That's all right.

BY MR. CHISOLM:

Q And you testified earlier you were telling the truth four years ago?

A Yes, I was telling -- I'm telling the truth right now.

Q So if you were telling the truth four years ago, then mostly all of your testimony yesterday was a lie, correct?

A Excuse me. All my testimony was a lie? No, it wasn't.
Q You just said you were telling the truth four years ago; nothing you said four years ago matches what you said yesterday?
A What I said yesterday was the truth. That's exactly what happened.
Q So then you lied four years ago? One of them has to be a lie?
A I did lie four years ago. I said I lied four years ago, and I wasn't -- I'm not going to say I didn't lie, but I know what I said yesterday was the truth.
Q Okay. So the November 16th interview was a lie, is what you're saying?
A If you listen to most of it, all of it, some parts I might have left out, but it wasn't a lie when you were talking to them.
Q You gave a completely different story?
A I didn't give a completely different story. I left some things out, but I didn't give them a completely different story.
Q Really?
A Sometime you're in a situation like that the more you know like on everything when you're sitting in front of people they're trying to accuse you of something, yes, you might leave something out. But I know I didn't lie. What

I'm telling you right now today and yesterday, it's the God honest truth. I'm saying you shot that man. I want you to be a man and admit what you did.

Q I didn't do anything, David.

A Oh, okay.

MR. HILTON: Objection.

THE COURT: Sustained.

MR. CHISOLM: Yes, Your Honor.

BY MR. CHISOLM:

Q Now, in your alleged confession on November 16th, you said you were looking at the building, you saw a spark, you heard a pop and then you added later that you saw me bringing a gun down?

A I saw you bringing a gun down?

Q Yes.

A I didn't -- see a gun until after you shot that man. I ain't talked about bringing no gun down. You talking about bring a gun down, are you talking about when you shot him?

Q You said, in your interview, that you saw -- that you were looking at the building, you saw a spark, you heard a pop. They asked you if I shot him. You said you weren't sure, but you saw me bringing a gun down. You added that later.

A No. I saw you shot him.

Q We just played your tape, David.

A Yes. I knew you did play my tape.
Q Okay. Was it dark in the car?
A No, the apartment had plenty of lights around it. So you could see lights, you could see right there inside with the lights out.
Q Okay. And so you could see clear inside the car is what you're saying?
A This far from each other.
Q Okay.
A If I couldn't see you like that, come on, what --
Q And you were looking at the side of a building, so were you looking out of your peripheral vision?
A I saw shot that man.
Q I'm asking you a question, you're not answering. Were you --
A I'm answering your questions. I saw you shot him.
Q If you were looking at the building, were you looking at me out of your peripheral vision?
A No. I got my head turned and I can still see you. I can see this. I saw when you shot him.
Q I understand. I'm asking if you were looking out of your peripheral vision?
A (No response.)
Q Is that a yes?
A (No response.)

MR. CHISOLM: He's being non-responsive, Your Honor.

THE COURT: The question is; --

A No. I was looking around --

THE COURT: Hold. Just stop. The question is, were you able to see him out of the peripheral -- out of your peripheral vision.

A Yes. Yes, ma'am.

THE COURT: Very well. Ask him another question.

BY MR. CHISOLM:

Q Is it correct that you testified and given examples in and out of court was the only place you saw blood in and out of this truck was in a circular pattern in the back area of the seat.

A It was on the back area of the seat, right there. That's when I saw it.

Q So in the lower back area of the seat --

A I didn't say the lower back. I said right here in the middle of the seat right here.

Q And the gun, the alleged weapon that's never been proven as the murder weapon, you said this was thrown off the bridge, correct?

A Yes.

Q All right. And I recall you testified you saw it on the center console, it was in full view; yes?

A Yes.

Q Okay. Do you go fishing from time to time?

A Yes, I do.

Q Do you know the area the weapon was found in is a local fishing hole?

A Yes, I do.

Q Have you ever been to that local fishing hole?

A Yes, I have.

MR. CHISOLM: I need your assistance with the map.

(Mr. Chisolm confers with Mr. Loy.)

(Mr. Loy holds up map.)

THE COURT: You're getting good with that. What happened to it? I don't remember it being that crinklie. Okay. It still shows what it needs to show.

MR. CHISOLM: Okay.

THE COURT: How are your arms holding up?

MR. CHISOLM: I apologize, Your Honor.

THE COURT: Mr. Loy put his arms down, so he's okay. He was starting to feel the burn.

John, I think we've got an easel in that corner. It might be helpful. Do y'all see one in there.

MR. LOY: Highspeed technology, Your Honor.

THE COURT: Can everybody see that or does it need to be -- oh, bring it out a little bit. Come towards me a little bit. Great. Great.

Can you all see it? Great.

Mr. White, can you see it?

MR. WHITE: Yes, ma'am.

THE COURT: Oh, great.

BY MR. CHISOLM:

Q Could you show me the fishing hole, please.

A Right there.

Q The left, the bigger portion on the left. That makes it easier. Yeah, right there. And your residence at the time?

A Right in there.

Q So that was the closest fishing hole to your house?

A Yes, it was.

Q All right. Are you fairly familiar with the Clubhouse area?

A Yes, I am.

Q Okay. On November 8th, when you were arrested, you received a copy of your warrant, correct?

A Yes, I did.

Q Did you read it?

A I can't remember what it said.

Q Do you recall reading it at the time?

A Yes, I did.

Q Did the warrant, did your original warrant -- according to your recollection, I apologize, did it pretty much give a detail theory of what detectives thought happened in the

case?

A I don't remember what it said.

MR. CHISOLM: Can I use present recollection to refresh his memory?

THE COURT: You want to hand him his statement?

MR. CHISOLM: His original warrant.

THE COURT: You want to hand him something to refresh his recollection?

MR. CHISOLM: Yes. Well, I kind of need him to read it, Your Honor.

THE COURT: Okay.

MR. CHISOLM: I want to refresh his recollection with it.

THE COURT: All right.

MR. CHISOLM: As to the warrant, as to what warrant said, ma'am. Can I do that?

THE COURT: You know, you can hand him the Manhattan Phone Book to refresh his recollection if that's what you're wishing to do. If you're offering it for a different matter, then I -- I need to know, tell me what you're doing with it?

MR. CHISOLM: I'll just refresh his recollection, Your Honor.

THE COURT: That will be fine. I don't know if it will refresh his recollection, but you can pass it to -- pass it

to -- thank you, Mr. Hilton, Deputy. He'll pass it right to him. Thank you.

And you want him to review this to see if it refreshes his recollection?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right.

BY MR. CHISOLM:

Q Do you recall pretty much the detail of what detectives theory of the case was?

A (No response.)

Q Theory of what happened?

A Yes, sir.

Q Did they state that they thought phone calls were made at certain times?

A Yes. They stated that.

Q Did they state that they thought the passenger seat was removed?

A Yes.

Q Did they state that they thought a phone call was made from a certain area at a certain time?

A Yes.

Q Did they state the caliber that they thought the deceased died from?

A Yes.

Q So they gave you a whole theory of the case, right?

A Yes.
Q On 9/24, your second interview, if you recall 9/24/07, were you showed towards the end of that interview a picture of the deceased?
A Yes.
Q All right. Do you recall if that picture was the area, do you recall the area where the deceased was when they showed you the picture?
A The scene, the ditch with him in it.
Q So they showed you the crime scene?
A They didn't show me that, they just showed me where he was at. Know what I'm saying, the ditch.
Q So in essence you know the Clubhouse area?
A Yes.
Q You know the fishing hole?
A Yes.
Q You saw the crime scene photo of what happened, and you had the whole detectives theory of the case, correct?
A Yes.
Q And you sat in your cell for eight days and then you decided to make a statement?
A I made a statement on what happened, not because of --
Q Yes or no?
A Yes.
Q Okay.

A And on the statement it showed about you making a call to your wife and the time -- and you made a call off the phone and the time. They said you made a call to your wife, like I said you did.

Q I'm aware of that. You read the statement before you gave a statement is what I'm getting at. You read your whole warrant before you made a statement eight days later. I have another question for you if you'll give me one second, please. Thank you.

Could you tell me what time I allegedly dropped you off, if you recall?

A It was probably between 4:00 and 5:00 or something like that. I don't remember the time, exactly. I'm not even sure.

Q Okay. Could you tell me did we ever go anywhere near or towards the Butternut Road or Jedburg area?

A Butternut Road. No.

Q Could you tell me where and when -- where did I allegedly make the phone call to Sike?

A On 165

Q Okay. From the deceased phone?

A Yes.

Q In your opinion, would the deceased phone records reflect that?

MR. HILTON: Objection.

THE COURT: Sustained.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. Redirect?

MR. HILTON:

DAVID WHITE - REDIRECT EXAMINATION

BY MR. HILTON:

Q Mr. White, did the Sheriff's Office ever tell you what to say?

A No.

Q And Mr. Chisolm made a big deal about the first two interviews. Whose story were you giving in those first two interviews?

A The story he made up.

Q Who made up?

A Mr. Chisolm.

Q Not Det. Giglio, right?

A No, sir.

Q And you remember about when you got arrested?

A Yes, sir.

Q About what day was that?

A I know I was arrested --

Q Was it in the early part of November?

A Yes. I can't remember the date.

Q Okay. And prior to you getting arrested, when you went into the Sheriff's Office those two times to give those

statements Mr. Chisolm was asking you about?

A Uh-huh. (Affirmative response.)

Q Did the Sheriff's Office beat you?

A No.

Q Did they arm twist you?

A No.

Q Put a gun to your head?

A No.

Q And, in fact, during those first two interviews did you give them any information other than what the defendant told you to tell?

A No, I didn't.

Q On the second interview at the Sheriff's Office, do you remember telling them, I've had enough of these questions. If you're not going to arrest me I'm leaving.

A Yes.

Q And were you able to leave?

A Yes.

Q When you gave that final statement on November 16th, I think was the date, had Don been arrested at that point?

A If I'm not mistaken, yes, he was.

Q And he was incarcerated at that point?

A Yes, he was.

Q And I think you testified yesterday about being scared of him; were you scared of him after he was incarcerated?

A No. He couldn't bother nobody.
Q Now, let's talk about how you came in contact with police around the 16th, that last statement you were talking about; did the police contact you?
A No.
Q How did that happen?
A I got my lawyer to contact them.
Q After that second interview and other than that day they served you with the warrant, so I guess after they served you with your warrant did police ever talk to you again until after the 16th?
A No.
Q When you came in on the 16th, did the Sheriff's Office tell you what to say?
A No.
Q Did they give you a statement that you could read and review and then came in there and gave a story?
A No.
Q And Mr. White, I think you told Mr. Chisolm, you have an 8th grade education, right?
A Yes.
Q And you were working as a brick mason at the time?
A Yes, sir.
Q Or laborer, I think you said.
A (No response.)

Q There's a couple of things that Mr. Chisolm brought up about the seat. I want to ask you about that briefly, okay.

You testified yesterday, in fact, we introduced a picture, State's Exhibit No. 7 -- Mr. White can you just set that map down. We talked about the seat cover, do you remember that?

A Yes.

Q All right. Was that seat cover on the vehicle the night of September or the early morning of September 13, 2007?

A No, it wasn't.

Q When did that seat cover get on the vehicle?

A After he cut the -- cut the blood stains out.

Q All right. When he showed you that --

A He pulled me to the side and showed me where he cut the spot where the blood was at.

Q So we all understand, after he cut the seat out sometime before he showed it to you, the seat cover was placed on it?

A Yes.

Q You said he was able to move the seat cover and you saw the hole?

A Yes.

Q Okay. And Mr. White, I want to go back to the interview for just a second.

The portion that Mr. Chisolm played, was that your whole interview?

A No.

Q Were there other parts in that interview?

A I believe so.

Q Let me show you what's been marked for identification as State's Exhibit No. 15. Have you had an opportunity to view a portion of this video tape?

A Yes, sir.

Q And is this an accurate report of the video as it was conducted on November 16, 2007, at the Sheriff's Office?

A Yes.

MR. HILTON: Your Honor, at this time, we would offer State's Exhibit No. 15 into evidence.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well.

MR. HILTON: At this time we'd ask to publish to the jury?

THE COURT: Very well.

MR. HILTON: This is the defendant's video. At least --

THE COURT: It needs to be marked for identification purposes, at least.

BY MR. HILTON:

Q Mr. White while this is rewinding, I'll just ask you a

couple of questions. On this November 16th, did anybody beat you?

Q Did anybody force you into making a statement on the 16th?

A No.

Q Did anybody put a gun to your head?

A No.

Q Did anybody tell you what to say?

A No.

(Video plays.)

(Video stops.)

BY MR. HILTON:

Q Mr. White, just a couple more questions. At the time you gave this statement on November 16, 2007, did you know anything about a proffer agreement at that time?

A No.

Q Had you ever even met me at that time?

A No.

Q And did they say anything about reducing your charge at that time?

A No.

Q One brief question that you brought up on the interview. You said something about Jay's cell phone. I think you testified yesterday a little bit about that. Who was Jay and what about his phone?

A Jay was a friend of the family. He stay -- he's in school and he comes down at times.

Q And did you have a cell phone at the time?

A No.

Q And who's cell phone did you use?

A Jay's.

Q And on September 13, 2007, and around that time, whose phone were you using?

A Jay's.

Q Please answer any questions Mr. Chisolm may have.

THE COURT: All right. Recross?

MR. CHISOLM: Yes.

DAVID WHITE - RECROSS EXAMINATION

BY MR. CHISOLM:

Q You said on November 16th, your attorney did talk to the solicitor, correct?

A He talked to me, yes.

Q But someone talked to the solicitor, Mr. Hilton wasn't working yet, correct.

A I don't know what solicitor he talked to.

Q All right. On that day you offered to take a test; did you ever take it?

A The polygraph test?

Q Yes.

A Yes, I did take it.

Q When was this?

MR. HILTON: Your Honor, I'm going to object at this point.

THE COURT: Sustained.

MR. CHISOLM: One second, Your Honor.

THE COURT: All right.

MR. CHISOLM: Your Honor, could you excuse the jury for one second?

THE COURT: Do you have a matter of law?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. Ladies and gentlemen, please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you.

(Jury out at 10:53 a.m.)

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: Yes, sir?

MR. CHISOLM: Your Honor, I have a discovery issue. We've been in court numerous times to insure that I had everything in discovery that I was entitled to everything. I have no -- there's nothing that I've been given that acknowledges that a test took place or the test was possibly taken the day it may have taken place or the result or anything. And though it may not be admissible I'm entitled to everything as it pertains to my case.

THE COURT: Why did you ask the question?

-- if you don't want it, I'm not going to do that. So that's about as accommodating to step him down, because it's inconvenience is not going to work. Okay. We're going to go forward.

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right.

Do you need a minute to tell whomever about Mr. Krell? You got somebody handling that. Great.

Let me have my jury, please.

(Jury in at 11:39 a.m.)

THE COURT: All right. Ladies and gentlemen at this time we will continue with the cross-examination of Mr. White.

Mr. Chisolm.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. All right. I'm just going to ask you to just remain with us. Thank you so much. You may come down.

Call your next witness, please.

MR. HILTON: State would call Ms. Patrice McKnight.

THE CLERK: Please raise your right hand, state your full name for the record.

MS. MCKNIGHT: Patrice McKnight.

THE CLERK: Could you spell your name please?

MS. MCKNIGHT: P-a-t-r-I-c-e M-c-K-n-I-g-h-t.

(WHEREUPON, Patrice McKnight was

sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank you, Your Honor.

PATRICE MCKNIGHT - DIRECT EXAMINATION

BY MR. HILTON:

Q Ms. McKnight, where are you employed?

A Verizon Wireless.

Q And what's your position at Verizon?

A Executive Relations Analyst.

Q What does that mean?

A I am custodian of records. I handle SEC complaints and media complaints.

Q Okay. And you said, Verizon. At some point in time did Verizon telephone company take over Alltel?

A Yes.

Q Do you remember when that was?

A Around January of 2009.

Q And in that take-over, did Verizon continue to maintain the records that were originally maintained by Alltel?

A Yes.

Q And that would include telephone records?

A Yes.

Q Are you aware of whether then telephone company, Alltel, received a subpoena for telephone records for the

number, [redacted], for the dates of September 8, 2007 at 12:00 a.m. to September 17, 2007 at 12:00 a.m.?

A Yes.

Q Let me show you what's been marked for identification as State's Exhibit No. 16, and ask if you recognize this?

A Yes.

Q Do those appear to be the records of that phone?

A Yes, they are.

Q And what is the telephone number?

A The telephone number is [redacted].

Q And are those the records that are kept in the normal course of business?

A Yes.

MR. HILTON: Your Honor, at this time, we would offer State's Exhibit No. 16 into evidence?

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: State's Exhibit 16 in evidence without objection.

(State's Exhibit No. 16, phone records, was marked and entered.)

BY MR. HILTON:

Q Do you know who's account this was assigned to?

A Tabitha Polite.

Q Please answer any questions the defendant may have for

you.

THE COURT: Cross-examination.

MR. CHISOLM: One moment, Your Honor.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Can you hand her this?

DEPUTY SMITH: Judge?

THE COURT: Yeah, sure, you want to hand her back her document. Sure. All right. Thank you.

(Deputy Smith passes document to the witness.)

PATRICE MCKNIGHT - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Would you be able to verify from the phone records what tower the phone call came from?

A These are different records now.

Q So there's no way to --

A These were held by Alltel, so basically I would not be able to track these records for you.

Q Okay. Could you confirm a phone call was made at 4:13 -- I'm sorry, on September 13th at 4:13 a.m.?

A Okay. What time?

Q 4:13 a.m.?

A Yes.

Q Could you also confirm that a phone call was made at 5:30 a.m. on the same date, September 13th?

A Yes.
Q All right. Is there any way -- it is possible to tell exactly what time the phone was turned off?
A No. Not from these records.
Q All right. Thank you. I have no further questions.
THE COURT: Redirect?
MR. HILTON: What'd we do with the records?
MR. CHISOLM: She has them.

PATRICE MCKNIGHT - REDIRECT EXAMINATION

BY MR. HILTON:
Q The 5:30 call, do you have a copy of these records?
A Yes.
Q The 5:30 call Mr. Chisolm just referred to, can you take a look at that, that's on September 13, 2007?
A Yes.
Q Is there an outgoing number or a number that was dialed?
A Okay. 570.
Q Is that any valid telephone number other than maybe the operator?
A From these records, I wouldn't be able to tell.
Q Was there any out-going calls after that time?
A No.
Q No further questions.
THE COURT: Any re-cross?

MR. CHISOLM: Yes, our Honor.

PATRICE MCKNIGHT - RE-CROSS-EXAMINATION

BY MR. CHISOLM:

Q Okay. Would you confirm that the call -- all right, at 3:34 a.m. on September 13th, could you confirm that was an incoming call?

A That was an incoming call.

Q Could you tell me the number that that incoming call came from, the number that it shows that it came from?

A It shows an [redacted].

Q Okay. And the call after that at 4:13 is one outgoing call, correct?

A Correct.

Q And that number is?

A It is [redacted].

Q And you said -- and the 5:30 a.m. call, which is the last call reflects a zero, correct?

A Correct.

Q Thank you.

MR. CHISOLM: No further questions, Your Honor.

THE COURT: Is this witness free to leave?

MR. HILTON: She is.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: You are free to go. Thank you.

Call your next witness, please.

MR. HILTON: State would call Sue Johnson.

THE CLERK: Please raise your right hand, state your full name for the record.

MS. JOHNSON: Susan Johnson.

THE CLERK: Could you spell you name, please?

MS. JOHNSON: S-u-s-a-n J-o-h-n-s-o-n.

(WHEREUPON, Susan Johnson was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: One minute, Your Honor?

THE COURT: Oh, sure.

SUSAN JOHNSON - DIRECT EXAMINATION

BY MR. HILTON:

Q Ms. Johnson, where are you employed?

A By T-Mobile.

Q And what's your position with T-Mobile?

A I am the custodian of records.

Q And in that capacity you're responsible for responding to subpoenas and testifying in regard to those subpoenas?

A Yes.

Q Now, T-Mobile, is that a cell phone company?

A Yes, it is.

Q And at some point in time, did T-Mobile take over the

company Sun-Com?
A Yes, we did.
Q Is that like an umbrella company or is T-Mobile the parent company.
A T-Mobile is the main company.
Q Did T-Mobile receive a subpoena, or Sun-Com at the time, receive a subpoena for telephone records for the number [redacted], for the dates of September 8, 2007 from 12:00 a.m. to September 17, 2007 at 12:00 a.m.?
A Yes, sir.
Q Let me show you what's been marked for identification as State's Exhibit No. 17, and ask if you recognize these?
A Yes, I do.
Q Do these appear to be those phone records?
A Yes, sir.
Q And are these the records that are kept in the normal course of business for telephone number [redacted]?
A Yes.
Q And were maintained by Sun-Com?
A Yes, sir.
Q And taken over by T-Mobile?
A Correct.
Q Let me ask you, from these records what are some of the things that you can tell from the telephone calls?
A The day and time, as well as the cell site location, as

well as the duration.

Q Can you tell the calling number and the number that was called?

A Yes.

Q When you say the cell site locations would that be kin to like a tower location?

A Correct.

Q Now, what can you tell from tower information?

A Tower information gives us the general area in which a cell phone is located.

Q Now, the calls from around 2:00 a.m. on September 13, 2007, to about 8:00 in the early morning hours on September 13, 2007, what towers are we talking about there?

MR. CHISOLM: Objection, relevance, Your Honor.

THE COURT: Overruled.

A I'm sorry. What were the dates, again?

BY MR. HILTON:

Q From -- we're talking about September 13, 2007, from 2:00 a.m. to 8:00 a.m.?

A Tower number 6048, 6075, 6129, and 6152.

Q Now, through records and so forth, are you able to translate those tower numbers into, like, an address?

A Yes.

Q Do you know the address for telephone tower 6048?

A Yes, I do.

Q What was that?
A 400 Orangeburg Road in Summerville.
Q What about 6075?
A 516 Beach Hill Road in Summerville.
Q 6129?
A 1049 Beach Hill Road in Summerville.
Q And what about 6152?
A 132 Trolley Road in Summerville.
Q Now, generally how do these cell phone towers work?
A Generally, what happens is when the cell phone is turned on it will reach out to the nearest tower with the strongest signal. You then press the send button to call the person, it gets routed through the tower into the switch and then it's delivered by a land line to the person that you're actually calling.
Q And let me ask you a question kind of in reverse. Is it easier to tell from tower location, especially the information we're dealing with here, is it easier to tell where someone is not as opposed to where someone actually is?
A (No response.)
Q Let me rephrase that. Can you pinpoint the location of somebody with cell phone towers?
A You can't actually pinpoint, you can give the general area based on the cell towers.

Q And let me ask you this question. If someone's hitting off of towers in Area B would they be in Area A?

A No, they would be near Area B.

Q Looking at the records in front of you there, I think that's State's Exhibit 17.

MR. HILTON: And I'm not sure if I moved those into evidence or not, but at this time I would ask to move those into evidence.

THE COURT: All right. Have you shown the exhibit to Mr. Chisolm?

MR. HILTON: I did.

THE COURT: All right. Any objection?

MR. CHISOLM: Your Honor, unless they can show whose phone records they are and how they're relevant. I object.

THE COURT: All right.

MR. HILTON: That will become relevant.

THE COURT: I will conditionally admit it expecting you to tie up the relevancy of it. And if that is not tied up, then -- we'll have to deal with that issue at that point. All right. Very well.

It is conditionally admitted.

(State's Exhibit No. 17, phone records, was marked and entered conditionally.)

BY MR. HILTON:

Q Looking at State's Exhibit No. 17, can you tell whether

the person that was using this phone, phone number [redacted] between about 3:51 and 4:54, was that person in the area of the 400 Orangeburg Road tower?

A I'm sorry, between 3:51 and what time?

Q 4:54.

A Between 3:51 and 4:54 a.m. no, they were not hitting off of the Orangeburg Road tower.

Q What towers was the person hitting off of that time?

A 6075, which is 516 Beach Hill Road; 6129, which is 1049 Beach Hill Road.

Q Okay, and then closer up to 4:54, what tower is that?

A 4:54 is tower number 6152, which is 132 Trolley Road.

Q Okay. Please answer any questions the defendant may have for you.

THE COURT: Cross-examination.

MR. CHISOLM: Yes, Your Honor.

SUSAN JOHNSON - CROSS-EXAMINATION

BY MR. CHISOLM:

Q You said the area can't be pinpointed exactly, right?

A Exactly, correct.

Q If you were bouncing off of, let's say, two towers -- I don't know how to word this -- if the time frame, if you were bouncing in between two towers, let's say within a minute apart, would you be able to give a general idea, triangulate, you understand what I'm saying where the person

might be in?
A No. What do you mean by bouncing?
Q Okay. On 9/13, on September 13, there's a phone call at 4:47 a.m., and I believe that tower -- one second. I believe that's the Beach Hill Road tower; correct?
A Correct. 516 Beach Hill Road.
Q Now, at 4:48 a.m., the next phone call. It's coming from 132 Trolley Alley, the tower on Trolley Alley?
A Right.
Q Would you be able to tell from -- would it be more likely that you're in that area of town in between those two towers?
A Looking at these records, it's hard to tell which side of the tower that the person was hitting off of.
Q What's the range, what's the average range on a tower?
A It depends on the area. The tower can cover one mile out to 15 miles. Depends on how the engineering has been set up.
Q Would you be able -- if I gave you a specific tower, would you know what the range is of that tower?
A Not right now, no.
Q Would you say it ranges -- it could range anywhere -- it could range anywhere in between one mile to 15 miles?
A Correct.
Q All right. But you can tell if they don't hit that

tower, hit a certain tower, it's pretty likely they're not in that area?

A (No response.)

Q If they never hit a tower then there's pretty likely they're not in that general area?

A The records that reflect here are going to show the area in which the telephone was at.

Q I got you. Could you look at those records in between the time frame of -- actually, could you look at those records in between the time frame of 1:26 a.m. on September 13 to I'd say 8:11 a.m. on September 13, and verify if the cell phone hit off of the tower location of 4500 Highway 17-A/Clubhouse.

A I wouldn't know that without having a cell site list.

Q Okay. Hold on. For the number for 4500 --

A I would need the tower number for that address where the tower is located.

Q Okay. Let's see -- could you verify this, could you look at each one and tell me which tower they did it on.

A I can only tell you the four towers that were in question. I would need a cell site list to determine where the others are located.

MR. CHISOLM: Your Honor, pass this --

THE COURT: I don't know what it is. Has counsel seen it?

(Documents passed to Mr. Hilton.)

THE COURT: Thank you. Yes.

(Documents pass to deputy to pass to witness.)

BY MR. CHISOLM:

Q All right. I'm going to try to explain a little further. I don't have the actual number -- I have a lot of cell site towers there. I don't have the actual number for 4500 Highway 17-A and Clubhouse Road. What I'm trying to verify is if you could look at all the calls in between 1:26 a.m. to 8:11 a.m., and verify that it hit off of some tower on that list, but it never hit off of the 4500, I don't have the 4500, but it's -- it's not going to hit off of the 4500, in other words, what I'm saying.

MR. HILTON: I'm going to object to that. We have to be referring to the towers that were active in 2007.

THE COURT: So your concern is -- is the foundation?

MR. HILTON: Correct.

THE COURT: Well, --

MR. CHISOLM: Actually, Your Honor --

THE COURT: Hold on. Let me rule.

You just got handed a document. I don't -- do you recognize that document?

MS. JOHNSON: Yes, I do, ma'am.

THE COURT: Okay. And if you're able to answer the question, then I'm going to ask you, since you recognize

that document, if you can answer the question, please answer the question.

MS. JOHNSON: Okay. He's asking if the phone was hitting a tower located at a certain address. I can't answer that because I don't know the tower number of the address that he's referring to.

THE COURT: Okay.

BY MR. CHISOLM:

Q Could you go from each phone call one by one from 1:26 a.m. until 8:11 a.m. and verify what tower it hit off of?

A The call at 1:26 a.m. was tower number 6048, which was 400 Orangeburg Road. The next call was at 2:01 a.m., which was the same tower number, 6048. At 2:04 a.m, it was the same tower number, 6048. The call at 2:06 a.m., same tower number 6048. The call at 2:11 a.m. was 6048. The call at 2:16 a.m., the same tower number, 6048. The call at 2:20 a.m., was tower number 6048. The call at 2:35 a.m., tower number 6048. The call at 2:53 a.m., tower number 6048. Next call was at 3:06 a.m., tower number 6048. Next call was at 3:50 a.m., tower number 6048. Next call was at 3:51 a.m., tower number 6075. Next call is 4:41 a.m., which is tower number 6129.

Q I'm sorry to stop you. Before you get into the new towers could you verify the address on them?

A Sure. Tower number 6075 is 516 Beach Hill Road. Tower

number 6129 is 1049 Beach Hill Road. Next call is at 4:47 a.m., tower number 6075, which is 516 Beach Hill Road. Another call at 4:47 a.m., is the same tower number, 6075. The next call is at 4:47 a.m., tower number 6075. The next call is at 4:48 a.m., which is tower number 6152, which is located at 132 Trolley Road. The next call is at 4:48 a.m., and that is tower number 6152. Next call is at 4:49 a.m., tower number 6075, which is 516 Beach Hill Road. Next call was at 4:49 a.m., which is tower number 6152, which is the Trolley Road tower. The next call is at 4:51 a.m., tower number 6075, which is Beach Hill Road. The next call is 4:53 a.m., which is tower number 6075. The next call is at 4:54 a.m., which is tower number 6152, which is the Trolley Road tower. The next call is at 6:19 a.m., which is tower number 6048, which is Orangeburg Road. The next call is at 7:58 a.m., which is tower number 6048, which is Orangeburg Road. And then the last call at 8:11 a.m., and that's 6048, which is Orangeburg Road.

Q Okay. Would it be correct that no calls hit off of tower number -- Could you check and see if 162 Checkerboard Lane, off of that tower?

A There is no tower that hit -- Checkerboard Road.

Q Okay. And you say without me having the number for 4500 Highway 17-A and Clubhouse Road you can't verify, but you can because you just listed every tower that I hit,

correct?

A Every tower that was hit.

Q And I didn't hit -- you didn't leave out any towers?

A No.

Q And that -- so that would be all the towers that I hit, and I would have to have been in that general area?

A Correct.

Q Thank you.

MR. CHISOLM: I have no further questions.

THE COURT: All right. Redirect?

MR. HILTON: One question, Your Honor.

THE COURT: All right.

SUSAN JOHNSON - REDIRECT EXAMINATION

BY MR. HILTON:

Q Ms. Johnson, if no calls were made or received would there be any tower information indicated on the phone records?

A No, sir.

Q Thank you.

THE COURT: Any recross?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. Is this witness free to leave?

MR. HILTON: She is.

THE COURT: You are free --

Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: You are free to go.

Call your next witness.

MR. HILTON: State would call Dr. Erin Presnell.

THE CLERK: Please raise your right hand. State your full name for the record.

DR. PRESNELL: Susan Erin Presnell, P-r-e-s-n-e-l-l.

(WHEREUPON, Erin Presnell was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

ERIN PRESNELL - DIRECT EXAMINATION

BY MR. HILTON:

Q Dr. Presnell, where are you employed?

A I'm a Forensic Pathologist at MUSC in Charleston, the medical university.

Q How long have you been working there?

A I've been a faculty member there since 1999.

Q And basically what is a forensic pathologist?

A Well, forensic pathology is a sub-speciality of the field of pathology. General pathology. Pathology is the study of disease. Pathologist are the doctors that looks at tissues or fluids of body samples taken from a patient by their family doctor or their GYN or their pediatrician.

They look at those tissues and whatnot under the microscope and do certain things to them and come up with diagnoses, like cancer or not cancer, it's infection or not infection. Then a broad field of pathology. I'm trained as a general pathologist. I'm also trained for the sub-speciality of forensic pathology, which is where we're looking not just at a piece of tissue or something that's been taken out by a surgeon, we're looking at the whole entire body of someone who has passed on. Our process of doing that is called the autopsy. Although we are looking for disease, and documenting any disease process, we're also looking at trauma and evaluating trauma and interpreting that, and then putting everything together in the final autopsy report which includes the cause and manner of death.

Q Can you tell the jury your background and education?

A Well, pathologist are doctors, so I went to college and then I went to medical school. After you go to medical school, that's when you take your specialty whether it's pediatrics or family medicine. I chose pathology, which was a five year training program and then an additional year in just forensics. And then through this process I've taken my boards, national boards. I'm Board Certified in Anatomical Clinical Pathology, just the general pathology and I'm also Board Certified in Forensic Pathology.

Q And is this what you do on a daily basis?

A Yes.
Q And about how many autopsies would you say you have performed over the course of your career?
A An estimate of about 2000.
Q Have you ever testified as an expert before?
A Yes.
Q About how many time?
A Again, an estimate about 85, maybe.
Q Has that been in state courts like this one?
A Yes.
Q Any other courts?
A Federal court.

MR. HILTON: Your Honor, at this time, we'd offer Dr. Erin Presnell as an expert in the field of Forensic Pathology.

THE COURT: Is there any voir dire?

MR. CHISOLM: No, Your Honor.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. She's so qualified.

Ladies and gentlemen, let me just talk to you a moment about what's just occurred. Dr. Presnell has been qualified as an expert in the field of forensic pathology. What that means is that she will be allow to testify with regards to her opinions and the reason for those opinions. The reason

that that matters is that under our rules of evidence, ordinarily a person is not allowed to testify regarding their opinions or the reasons for those opinions, but there is an exception and that is when by virtue of someone's knowledge, education, training, experience, profession, that they have become an expert in the field of science or medicine or art, and they are allowed to testify regarding their opinions and the reasons for those opinions within their expertise.

What that means is that Dr. Presnell will be allowed to testify regarding her opinions and the reasons for those opinions within the field of forensic pathology.

Now, ladies and gentlemen, I will give you further instructions regarding expert testimony, however, I will just tell you now that expert testimony is given for the purpose of helping you understand the evidence, and not, of course, for the purpose of controlling your judgment.

Thank you.

MR. HILTON: Thank Your Honor.

BY MR. HILTON:

Q Dr. Presnell, did you receive a body back on September 13th, 14th, somewhere around in there, of a Craig Michael Canady?

A Yes. One of the coroners at Dorchester County referred Mr. Canady to us for autopsy on September 16, 2007.

Q It was the 16th?
A Yes.
Q And were you about to perform an autopsy on Mr. Canady?
A Yes, we did a complete autopsy.
Q And did you recover a projectile from the head of the body?
A Yes.
Q Let me show you what's been marked for identification as State's Exhibit No. 18, and see if you recognize it?
A Well, this looks like it comes from our autopsy room. It has out autopsy label on it with an autopsy number and the deceased person's name and my handwriting. It's a bullet. Sounds like there's bullet inside.
Q And is that how you normally package things?
A Yes, typical packaging that we would prepare.
Q And does that appear to be the projectile that you recovered during the autopsy of Mr. Canady?
A Yes, that's what it says, the projectile.
MR. HILTON: Your Honor, at this time we'd offer State's Exhibit No. 18 into evidence?
THE COURT: Any objection?
MR. CHISOLM: No, Your Honor.
THE COURT: Very well. State's Exhibit No. 18 in evidence without objection.
(State's Exhibit No. 18,

projectile, was marked and entered.)

BY MR. HILTON:

Q Were you able, Dr. Presnell, to determine the cause of death of Mr. Canady?

A Yes. When Mr. Canady came to us he had one major injury which was a fatal injury. He had a gunshot wound that entered the left side of his hear about right in this location. A little bit lower than your temple. The bullet traveled through the skull kind of through the base of the brain, through the brain stem area, which the brain stem is what connects your brain to your spinal cord, then traveled backward and actually went through the skull on the right side, but the skull has stopped it from exiting and that's where we recovered the bullet. The bullet that was entering the left side of the skull traveling backwards and just a little bit up, slightly up, all the way through to the right side.

Q Now, is that consistent with being shot from -- shot by a driver if you're sitting in the passenger side of a vehicle?

MR. CHISOLM: Objection, Your Honor. Calls for speculation.

MR. HILTON: I'll rephrase my question.

THE COURT: Very well.

BY MR. HILTON:

Q Dr. Presnell, in your opinion as an expert forensic pathologist with the wound that Mr. Canady suffered, the fatal wound that Mr. Canady suffered be consistent with being shot by the driver from the front seat of a vehicle if he's sitting in the passenger seat?

MR. CHISOLM: Objection. Outside her realm of qualification.

THE COURT: Overruled.

A Well, it certainly could be. When we were looking and examining, Mr. Canady at autopsy, he was laying flat down on the autopsy table and I can tell you the direction of the bullet was back, towards his back, and from his left to his right. So if you have, say him sitting in the passenger seat of a vehicle this is where the bullet is coming from. He's sitting straight forward, then the gun, you know, in this orientation. Now, if he moves that changes where the gun is. I don't know his position at the time of the shooting. Whether he's looking backwards or forwards or bending over, and I can't tell that from the autopsy. Certainly coming from the left side is consistent with his being shot from the left side of a vehicle.

Q Dr. Presnell, was there any decomposition of the body when you received it?

A Yes. He wasn't that decomposed, but he definitely showed signs of decomposition, he was bloated, there was

insect activity and he had turned partially green, some of his skin was slipping off. He had fly eggs and whatnot. So there was --

COURT REPORTER: Sorry, he had what?

DR. PRESNELL: Fly eggs.

A So there was some degree of decomposition which didn't actually obscure the actual bullet hole, but it obscured skin over the -- where the entrance gunshot wound was.

BY MR. HILTON:

Q Now, you mentioned fly eggs and decomposition. Was that consistent with being out in the weather for three days?

A Yes. I had received information --

MR. CHISOLM: Objection. He's leading the witness, Your Honor.

THE COURT: Don't lead.

BY MR. HILTON:

Q Based on your opinion as an expert, can you tell from the decomposition approximately how long the body was out in the weather?

A Well, the way that we really approach how long someone has been deceased is we evaluate the post-mortem changes, all the things that have changed and then compare it to a particular scenario; when the victim died what was that particular scenario. The information at the time of autopsy

we received he'd last been seen on the early morning hours of the 13th, found on the 15th. We autopsied him on the 16th, and these changes are consistent with that time line.

Q Dr. Presnell, based on your opinion as an expert in forensic pathology, what's your opinion of the cause of death of Mr. Canady?

A Cause of death is a gunshot wound to the head.

Q Please answer any questions Mr. Chisolm may have for you.

THE COURT: Cross-examination.

ERIN PRESNELL - CROSS-EXAMINATION

BY MR. CHISOLM:

Q All right, you said that you can't determine whether or not the victim would be turned a certain way or --

A Right. At the time of autopsy, I don't know the position of the victim at the time of the shooting.

Q So he could have been standing?

A He could have been standing, yes.

Q Do you -- did you have -- how would you normally tell a range of a gunshot; is there a way?

A Yes. The crime scene pathologist, when we're trying to evaluate how far away the gun is from a target, what we're looking at is what comes out the end of the barrel of the gun, not just the bullet that comes out the end of the barrel of the gun, but also little pieces of gunpowder

particles and also some soot. So there's three ranges of fire that we would typically classify a gunshot would as, one is contact where you have the hole and you have the soot deposited around the entrance wound, and that's when the muzzle of the gun is up against the skin. As the gun is pulled away from a target -- the soot comes out and may or may not reach the skin, because it's more like powder, but the little gunpowder particles, they come out the end of the barrel, too, some of them do. When they strike the skin and they cause little scratches all around the skin. We call this stippling. So when the gun contact is away from the skin but still close, the bullet will go in, the soot may or may not hit the skin, the gunpowder particles, those make stippling. We call that a close range gunshot wound. For most guns once you get out and you -- for most guns once you get out to a yard, 36 to 42 inches, the soot's not going to make it to the skin, the gunpowder particles aren't going to make it to the skin, only the bullet does. And so you see a hole with nothing around it. No stippling, no soot deposition. And we didn't do that in this case because Mr. Canady was decomposing. So any of the changes that were on the skin, if there had been any are now gone as the skin has sloughed away. So if there was some there we can't see it. If there had been soot there we can't see it. Or there may not have been anything there. So therefore it is officially

classified as an indeterminate range gunshot wound based on autopsy.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. Redirect?

ERIN PRESNELL - REDIRECT EXAMINATION

BY MR. HILTON:

Q Just to be clear, Dr. Presnell, are you saying that there was no stippling?

A I'm saying that we couldn't see any stippling, but if there had been I wouldn't have expected to see it because the skin now has sloughed off. The skin is gone over the area of the gunshot wound. So I'm saying that I cannot evaluate, I cannot say whether there'd been something there or not.

Q So when you say indeterminate range of gunfire or whatever phrase you used, can you repeat that for us?

A Yeah. Indeterminate range or determinate range. We can't tell from autopsy what the range of fire is in this case because of decomposition.

Q And that could have been from zero to infinity?

A Yes.

Q The range of the gun, I guess.

A Yes.

MR. HILTON: No further questions.

THE COURT: All right. Any recross?

MR. CHISOLM: Yes, Your Honor.

ERIN PRESNELL - RECROSS EXAMINATION

BY MR. CHISOLM:

Q So is it -- you can't tell the range; that's correct?

A Right.

Q And it could have been from here or to the wall?

A Yes.

Q So and we can't tell if the victim was standing, if he was sitting, lying down; we can't determine?

A I can't tell that from his autopsy. No.

MR. CHISOLM: I have no further questions.

THE COURT: Very well.

All right. Is this witness free to leave?

MR. HILTON: She is, Your Honor.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. You are free to go.

Call your next witness, please.

MR. HILTON: I was going to suggest -- I know we have somebody available by phone.

THE COURT: Oh, good. Yes.

MR. HILTON: We can break for lunch now.

THE COURT: Yes. I think that's appropriate.

Ladies and gentlemen, we are going to break for lunch at this point, and I'm going to ask you to please be back in

MR. LOY: Thank you, Your Honor.

MR. HILTON: Your Honor, I do have one unrelated matter before the jury comes in, I'd like to sort of hash that out. There's going to be some upcoming testimony with the next few witnesses by a person by the name of Thomas Simonelli. The gist of Mr. Simonelli's testimony is that around September -- it would have been the 14th, that Friday, he received calls from Mr. Chisolm in reference to Mr. Simonelli paying LKQ automotive for the car seat. The payment arrangement for that seat was that Mr. Chisolm was going to pay him twice the amount in cocaine in exchange for him putting the seat on his credit card.

All right. Also, the testimony by Mr. Simonelli would be that he knows the defendant because that was his cocaine supplier.

Now, the state would offer that testimony under Rule 404(b) to show motive in the case, and it's come out during the testimony of Tamekka Williams that Red had started selling drugs about a month prior to this. It's going to be the state's position that -- we kind of recently put this together, that defendant was selling drugs in the Haven Oaks area, the victim was selling drugs in the Haven Oaks area. Because of the motive, which would be admissible under 404(b), I think that testimony's relevant and admissible.

THE COURT: Well, let me ask you this question. Motive

is not, obviously, is not an element of the offense. Right?

MR. HILTON: That's correct.

THE COURT: I'm just noticing that you're -- you know you express that to the jury.

Well, essentially -- here's the interesting part of this evidentiarily speaking. Because the -- you know -- I tend to begin to look at these matters by looking to see the underlying -- what you're trying to prove. What you're trying to prove is that the defendant, Mr. Chisolm, desired to purchase a replacement front seat for his Durango. That's what you're offering to prove. As I understand it, the link between Mr. Simonelli is the information from LBS (sic) about he purchased it or was going to purchase it by credit card and the credit card was declined.

MR. HILTON: That's correct.

THE COURT: And that -- and the story goes forward, I gather, with the employees from LBS.

MR. HILTON: LKQ.

THE COURT: I'm sorry. Livingston. I know him as Livingston. So I gather your concern is with regard to his testimony about the mode of payment to Mr. Simonelli for the use of his credit, use of Mr. Simonelli's credit and for his being willing to go and purchase the seat for Mr. Chisolm?

MR. HILTON: That's correct, and there's many areas that make that more probative than prejudicial, if I can go into

some of those and connect it together.

THE COURT: Okay.

MR. HILTON: The defendant gave a statement to the police, which will come out in later testimony about he changed the seat out because it had some cigarette burns, and in fact, earlier on, he asked one of the witnesses about, I smoke Black and Milds or something to that effect.

THE COURT: Yes.

MR. HILTON: And, you know, here you have Thomas Simonelli purchasing a seat for him that he can't pay for. That's why he's paying cocaine for this seat. Obviously, LKQ doesn't take cocaine for payment. So he's having to make a third-party straw-man purchase, if you will.

COURT REPORTER: Straw-man?

MR. HILTON: Straw-man purchase, and so the fact that he's telling police and hashing out their testimony that he's going to change the seat out or that he changed the seat out of his car because it has cigarette burns. That doesn't -- that doesn't mess with the fact that a person that can't pay for a seat wouldn't be trading cocaine to pay for a seat the day after a murder. I think that that connects together.

In addition to that, is the motive element, about, you know, the victim was selling drugs in the Haven Oaks area. That's been established through the testimony of Tamekka

Williams. I need to establish at this point, and I think I'm entitled to establish, the defendant also sold drugs in that area to show motive as to why he would want to take out the victim, and we know -- This wasn't some long-standing thing. Tamekka Williams brought out the fact that he had just started selling drugs. Had been selling drugs for approximately a month prior to this happening.

It's the state's position that that would be quite a good reason for Mr. Chisolm to want to take out a fellow drug dealer that's cutting into his territory.

MR. CHISOLM: Your Honor, that is pure speculation and it is highly prejudicial. It's remote in time, it's not res gestae. It's not subject of conviction, it's purely unrelated and unsubstantiated conjecture.

In regards to Tamekka Williams, if she was still on the stand, Your Honor, her statements provided, her statements she never mentions Red or me having a conflict or a drug conflict. Thomas Simonelli doesn't live in Haven Oaks. Even if the victim was selling drugs inside Haven Oaks, Mr. Simonelli doesn't live inside of Haven Oaks. It's un -- there's no one saying I sold drugs inside of Haven Oaks. There's only Mr. Simonelli that a trade was going to take place. The purchase never even took place, Your Honor.

(Pause.)

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

THE COURT: Yes?

MR. CHISOLM: One more bit of information, Your Honor. The credit card in question was not owned by Thomas Simonelli.

(Pause.)

THE COURT: All right. Now, go over Simon --

MR. HILTON: Simonelli.

THE COURT: Simonelli. Go over what you, what you believe he would testify to?

MR. HILTON: The crux of his testimony is that on September 14, 2007, and he may not remember the date exactly, but around that time the defendant contacted him to make arrangements for the payment of a car seat from LKQ Automotive. Defendant was at LKQ when LKQ called or either Mr. Chisolm called Thomas Simonelli's phone where they arranged payment, I think, Mr. Simonelli's step-son's credit card. He was going to use the credit card to pay for the seat at the auto parts place there. That credit card was declined.

In addition to that, I would like to get into the payment arrangement that the whole reason that Mr. Simonelli was willing to do this was he had a cocaine problem, Mr. Chisolm was his cocaine provider. That the payment arrangement was going to be twice as much cocaine as the value of the seat. Otherwise, I agree that that would be

prejudicial without any connection at all. However, there is a connection, and that connection is the defendant's statement to police later on in October when he made a statement saying I changed my seat out because it had cigarette burns on it.

My argument in closing will be something along the lines of if you're trying to -- if you're so worried about changing the seat out on your car because it's got cigarette burns would you really be doing that by paying for it with cocaine. I mean, if you're going to change out your seat to fix up your car, you would have cash to do that. You wouldn't need to arrange for a cocaine payment to make that purchase.

So that's part of that testimony. The other part is the motive element of it, and the motive element is that we know through testimony now that the victim had been selling drugs in the Haven Oaks area for approximately a week. Mr. Simonelli, I think he lived right across the street -- the apartments right across the street from Haven Oaks. So while he didn't live in Haven Oaks, he lived right across the street. Mr. Chisolm was selling cocaine to Mr. Simonelli. That testimony become relevant then because it allows me to argue motive, and that motive being Mr. Chisolm was selling drugs in the Haven Oaks area, the victim had started selling drugs in the Haven Oaks area, and for that

reason he would have a reason to kill him.

THE COURT: Okay. I'm with you. I now understand you fully and I appreciate that.

Yes, sir.

MR. CHISOLM: By the same token, Your Honor, a week prior to these events he bought me two brand new tires for my truck on the same credit card. There was -- I mean, would that connect then, if he bought me two tires. That has nothing to do with -- it's been used before is what I'm trying to say. It was -- there's no way to prove that it was a in a rush order trade for cocaine. A week prior to that the man bought me two brand new tires on a credit car. What he's insinuating -- it just doesn't make sense. You see what I'm saying.

I'm sorry, Your Honor, give me one second.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, I just think it's highly prejudicial towards me. I've never been arrested for any drug charges. There's no evidence of ill will between me and Red. Other than this accusation there's nothing historically to show any problems between us. No one has testified that there was a war between us in drug competition. Nothing of that nature, Your Honor. It's just pure speculation, Your Honor, on Mr. Hilton's behalf.

THE COURT: All right. I think that Mr. Simonelli's

testimony is going to be admissible. I think that it's going to be admissible because I think that the -- certainly the portion of the testimony regarding the purchase of the seat is certainly relevant. It is admissible and then when you include in it the payment by cocaine as opposed to money, you know, cash, money for the seat, it certainly is relevant to the replacement of the seat. It is certainly relevant with regards to the representation that you have made conditionally that there is going to come a statement that says he's doing it for cigarette burns as opposed to some other reason such as it would be -- the seat as it was would be evidence in this case. And as I look at -- also look at 404(b), it talks about the issue of motive and motive is an issue that can be considered with regards to guilt even though motive is not an element of the offense, and there are a number of cases that are talked about. And in that you tell me and you represent that Mr. Simonelli lives across the street from Haven Oaks, which is this area. There is a connection, there is an undeniable connection, given the testimony that we've already hear, but I think the testimony, as I recall it, was that the alleged victim had been dealing drugs -- it was a short period of time. I remember it as being about a month, but yet -- your point is a short period of time. And I think that that does -- that evidence does allow an inference to be made also, of motive.

So there are a couple of reasons why I think it's -- why I think it's admissible.

With regard to the balancing -- in the prejudicial effect that I would be considering would be the prejudicial effect of cocaine possession. And that's -- I mean, it's in this case. And -- we talked about that initially. Initially, came in because it was really so much a part of what the story of what occurred on that evening particularly with the co-defendant as he talks about that's what he was doing, what brought them together. His testimony is that's what brought them together on both occasions that evening.

And it is not, obviously, having the testimony regarding cocaine is certainly not similar to the alleged offense. I think I would have a lot greater concern is we were talking about a crime involving physical violence, and it does not involve physical violence.

So I do not believe -- while certainly one assumes the prejudice because it does involve the defendant, I do believe the probative value far exceeds the prejudicial effect to him in this matter. So I would allow it.

MR. HILTON: Thank you, Your Honor.

THE COURT: Noting the exception thereto of the defense.

All right. Now, anything else?

(Mr. Chisolm confers with Mr. Loy.)

(Pause.)

we'll restrict as much as we possibly can, you're time here.

So while you're feeling like you're cooling your heels, because you are, we are out here working. I apologize for keeping you in your jury room, but you're probably getting to know each other. Y'all keep on you'll probably end up being related.

But at any way, ladies and gentlemen, we will continue at this time with the state's case.

Call your next witness, please, sir.

MR. AUSTIN: State calls Richard Johns.

THE COURT: All right. Mr. Austin.

THE CLERK: Please raise your right hand. State your full name for the record.

MR. JOHNS: Richard E. Johns.

(WHEREUPON, Richard Johns was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Is that Johns with an S?

MR. JOHNS: Yes, ma'am.

THE COURT: More than one John?

MR. JOHNS: Yes, ma'am.

THE COURT: Wonderful. Mr. Johns would you pull that microphone just a tiny bit closer for us.

MR. JOHNS: Fine.

THE COURT: And thank you so much.

Mr. Austin, your witness.

(State's Exhibit No. 19, was marked for ID only.)

(State's Exhibit No. 20, was marked for ID only.)

RICHARD JOHNS - DIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Johns, where were you working back in September 2007?

A At LKQ Auto Parts.

Q And what was your job there?

A Manager.

Q Do you remember an individual calling up and looking for a portion of a seat for a gray Dodge Durango?

A Yes, I do.

Q So you remember specifically what part of the seat that was?

A The whole seat --

COURT REPORTER: Sir, could you speak up for me just a little bit, please.

A The whole seat.

BY MR. AUSTIN:

Q Do you recall him looking specifically for a seat back?

A Yes.

Q And can you describe, maybe using that chair right

there what you're talking about?
A The back of the chair.
Q So that would include the actual bottom portion of it. And did y'all end up selling him the seat?
A Yes.
Q I'm going to show you what's been marked as State's Exhibit 19 and 20 for identification purposes. Do you recognize those?
A Yes, sir.
Q Can you tell us what they are?
A Yeah, it's the inventory of the fleet for the '06 Durango.
Q And did y'all keep those just in the normal course of business?
A Yes.
MR. AUSTIN: Your Honor, at this time I'd like to enter these in evidence.
THE COURT: Have you shown it to Mr. Chisolm?
(Passes documents to Mr. Chisolm.)
THE COURT: Any objection?
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well.
BY MR. AUSTIN:
Q Can you tell me about the name in the corner of the receipt?

A You mean the salesman or the one --
Q The one below the name of the business and the address.
A Don.
Q And can you tell us what that means.
A We get their first name when they call for a part.
Q Does that indicate when the purchase took place?
A Yes, it does.
Q Can you tell us when?
A 9/14/07.
Q And do you remember the defendant actually buying a seat that day?
A Yes, he did.
Q On the 14th? Now, that's an invoice for pulling the seats right?
A Right.
Q That doesn't indicate the purchase went took place, went through?
A Right.
MR. CHISOLM: Objection. Leading.
THE COURT: Sustained.
BY MR. AUSTIN:
Q Do you remember if the defendant came in the next day and actually came back for the seat?
A Yes, he did.
Q And that would be on the 15th?

A Yes, sir.
Q Okay. What kind of vehicle was the seat for?
A A 2006 Durango.
Q And can you just kind of explain what -- how that took place, when he called in for the seat after that point?
A He called in for the seat and he came in and I had the gentleman show him the seat and he purchased it.
Q On the 15th?
A Yes.
Q Can you tell me when the payment took place?
A It took place the -- well, it took place that afternoon, but I wasn't on the counter when he paid for it.
Q What about on the 14th?
A That's when talked to him.
Q Did you receive a phone call from anybody trying to --
A Yes, I did.
Q And do you remember who that was from?
A I thought the man said it was his daddy that asked for it.
Q And why didn't the transaction take place at that time?
A Credit card wouldn't go through.
Q Okay. Please answer any questions Mr. Chisolm has.

THE COURT: Cross-examination?

MR. CHISOLM: Yes, Your Honor.

RICHARD JOHNS - CROSS-EXAMINATION

BY MR. CHISOLM:

Q I just want to confirm, you said -- did the purchase take place on the 14th?

A No. The receipt was wrote on the 14th, but the credit card didn't go through on the 14th.

Q And was it paid by credit card or by cash on the 15th?

A It was paid by cash the following day, what I understand. I wasn't on the counter.

Q Okay. Do you recall making a statement on 9 -- on September 28, 2007 that the seat was not purchased or paid for by Tracy?

A Right.

Q So the seat was not paid for?

A Not on the 14th it wasn't.

Q On the 15th, do you recall making a --

A It was on the 15th.

Q Do you recall making a statement that the seat was not purchased on the 15th?

A I did. I did because it wasn't paid to me it was paid to Tracy.

Q What I'm asking you is do you recall in your statement saying that Tracy did not receive the money?

A Yeah, I did because I didn't know.

Q So she didn't --

A I hadn't talked to Tracy about it.

Q So does she confirm that she got a payment?
A Yes.
Q Thank you.
MR. CHISOLM: No further questions, Your Honor.
THE COURT: Very well.
MR. AUSTIN: Nothing further from the state?
THE COURT: Very well. Is this witness free to leave?
MR. AUSTIN: Yes.
THE COURT: Any objection?
MR. CHISOLM: No, Your Honor.
THE COURT: Very well. You are free to go.
Call your next witness, please.
MR. HILTON: State would call George Gallardo.
THE CLERK: Please raise your right hand. State your full name for the record.
MR. GALLARDO: George H. Gallardo, Jr.
THE CLERK: Could you spell your last name, please.
MR. GALLARDO: G-a-l-l-a-r-d-o.
(WHEREUPON, George Gallardo was sworn to tell the truth.)
THE CLERK: Thank you.
MR. HILTON: May it please the Court, Your Honor.
THE COURT: Yes.

GEORGE GALLARDO - DIRECT EXAMINATION

BY MR. HILTON:

Q Mr. Gallardo, where are you employed now?

A I'm on disability.

Q Where were you employed back in 2007?

A LKQ.

(Power outage with very loud screeching noise.)

THE COURT: My gosh.

MR. HILTON: That must have been the wrong answer.

THE COURT: My goodness. That was new and different.

COURT REPORTER: I hope that didn't blow my system.

THE COURT: What was child's figure that was like electrical, you know, one of the power rangers.

(Electricity out in courtroom.)

THE COURT: You know when the lights go out you didn't pay the power bill. What if the county paid it like twice or something. Got like a little extra something. Wow.

(Power back on.)

THE COURT: Are you okay?

COURT REPORTER: Yes, ma'am.

THE COURT: Your system's okay.

COURT REPORTER: We're good.

THE COURT: Okay.

I'm kind of scared to ask you to do this, but would you lower that microphone toward you just a little bit and just speak into it. Just say hello.

MR. GALLARDO: Hello.

THE COURT: I can't tell if it's working or not.

MR. GALLARDO: Hello.

THE COURT: It's working.

(State's Exhibit No. 21, photo, was marked for ID only)

(State's Exhibit No. 22, photo, was marked for ID only.)

(State's Exhibit No. 23, photo, was marked for ID only.)

BY MR. HILTON:

Q Mr. Gallardo, we're just going to start over again, okay?

Where are you employed now?

A I draw disability.

Q And where were you employed back in 2007?

A LKQ.

Q Okay, let me show you what's been marked as State's Exhibit No. 21 for identification, and just ask if you recognize this?

A Yes, sir. That's where I used to work at.

Q Is that a picture of the front of the building?

A Yes, sir.

MR. HILTON: Your Honor, at this time we'd offer State's Exhibit No. 21 into evidence.

THE COURT: Did you show it to Mr. Chisolm?

MR. HILTON: I did.

THE COURT: Any objection?

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. State's Exhibit No. 21 in evidence without objection. It is a photograph.

(State's Exhibit No. 21, photo, was marked and entered.)

BY MR. HILTON:

Q And at LKQ, what did you do there?

A I was a parts puller and a stripper.

Q That means you took your clothes off?

A No, sir. I stripped cars.

Q Okay. And do you recall back in September 14, 2007, pulling a seat for a Dodge Durango, 2006 model?

A Yes, sir.

Q Let me show you what's been entered into evidence as State's Exhibit No. 19, and 20, and just ask you to take a look at those.

A Yes, sir, that is the part.

Q The part what?

A That is the seat that I pulled.

Q This is actually a piece of paper?

A Right.

Q What does it mean?

A That's the work order.

Q Okay. Do you recall pulling that seat?
A Yes, sir.
Q And do you recall speaking with the customer that came in?
A My boss did, handled the transaction for me to pull the seat.
Q Okay. And what part was being requested?
A The back part of the seat on the passenger side, but you can't divide the whole seat.
Q Okay. Let me show you what's been marked for identification as State's Exhibit No. 22. Just ask if you recognize this?
A Yes, sir, that is the vehicle.
Q The vehicle what?
A That I pulled the seat out of.
Q That's an accurate picture of that vehicle?
A Yes, sir.
MR. HILTON: Your Honor, we'd offer State's Exhibit No. 22 into evidence?
THE COURT: Any objection?
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well. State's Exhibit No. 22 in evidence without objection. It is a photograph.
(State's Exhibit No. 22, photo, was marked and entered.)

BY MR. HILTON:

Q Can you see what's been marked as State's Exhibit No. 23 for identification?

A Yes, sir.

Q What does this appear to be?

A That appears to be a Dodge Durango seat.

Q Does this appear to be the seat that you pulled from that car that day?

A Yes, sir.

MR. HILTON: Your Honor, at this time we'd offer State's Exhibit No. 23 into evidence.

THE COURT: All right. And Mr. Chisolm, have you seen State's Exhibit No. 23 for ID?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. Any objections?

MR. CHISOLM: No, Your Honor.

THE COURT: Thank you.

State's Exhibit No. 23 in evidence without objection.

(State's Exhibit No. 23, photo, was marked and entered.)

BY MR. HILTON:

Q Do you recall, Mr. Gallardo, any mention of a seat belt?

A Yes, sir.

Q What was that about?

A They wanted a seat belt off the passenger side, but I did pull the seat belt and a piece of trim off the Dodge Durango.

Q Okay. And what do you mean by a piece of trim?

A On the B post.

Q Do you know if the customer ever got that?

A I don't think he did, sir.

Q What about the seat belt; do you know if he got the seat belt?

A I'm --

MR. CHISOLM: Objection. Hearsay, Your Honor. No foundation for the seat belt.

MR. HILTON: I'll --

THE COURT: You withdraw the question?

MR. HILTON: Yes, ma'am.

THE COURT: Okay.

BY MR. HILTON:

Q You mentioned the B post; what is that?

A You've got the A post by the windshield and then you have the passenger side B post.

(State's Exhibit No. 24, photo, was marked for ID only.)

Q Let me show you what's been marked for identification as State's Exhibit No. 24; ask if you recognize this?

A Yes, sir. I do.

Q What is this?
A That is the B post by the windshield.
Q What car is this?
A The '06 Dodge Durango.
Q That's the one you pulled the seat from?
A Yes, sir.
MR. HILTON: Your Honor, at this time we'd offer State's Exhibit No. 24 into evidence.
THE COURT: Any objection?
MR. CHISOLM: One second, Your Honor.
THE COURT: Sure.
(Mr. Chisolm confers with Mr. Loy.)
MR. CHISOLM: Your Honor, I object to relevance.
THE COURT: Very well. Overruled. It's relevant.
MR. HILTON: Thank Your Honor.
THE COURT: State's 24 in evidence over objection of the defense.
(State's Exhibit No. 24, photo, was marked and entered.)
BY MR. HILTON:
Q And Mr. Gallardo, you may or may not have said this, but did you say -- well, let me just ask you again.
Which seat was it that you were asked to pull?
A The passenger side seat.
Q Front, back?

A The front.
Q The front passenger seat?
A Yes, sir.
Q And I'm showing you, once again, State's Exhibit No. 19, the customer name on that receipt is who; on that part's request?
A It's got here, Don. Sold to Don. That's all I know.
Q All right.

Please answer any questions Mr. Chisolm may have for you.

THE COURT: All right. Cross-examination.

MR. CHISOLM: Yes, Your Honor.

I'd like to use present recollection refresh and let him read his statement, Your Honor, so I can ask more questions.

MR. CHISOLM: I would like to refresh the witness's memory?

THE COURT: I don't know that it needs to be refreshed.

MR. CHISOLM: All right.

THE COURT: Why don't you ask him a question and --

MR. CHISOLM: Sorry.

THE COURT: -- see if he needs to be refreshed, then you can.

GEORGE GALLARDO - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Mr. Gallardo, on September 26, 2007, did you talk to detectives about a part being pulled?

A Yes, I did.

Q Did you tell detectives that the customer needed a left seat, top part?

A Yes, sir.

Q That would be the driver's seat?

A That would be the passenger side.

Q The left side of the car?

A The right side.

Q Did you tell detectives the customer needed the left seat?

A No. He needed the right side, passenger side seat.

MR. CHISOLM: Your Honor.

THE COURT: You want to pass him something to refresh his recollection?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Okay.

Any objection, Mr. Hilton?

MR. HILTON: I am going to object --

THE COURT: Okay.

MR. HILTON: -- because he didn't say he didn't remember.

THE COURT: That's correct.

Now, he's not indicated he's had a problem with his

the looking at the photograph to keep them from listening to the trial as it's coming at them. So absolutely, everything that has gone into evidence is going to be yours during deliberations. So not to worry. All of that is coming back to you.

So we'll mark this as a Court's Exhibit.

Any objections to my comments from state?

MR. HILTON: No, ma'am.

THE COURT: From you, Mr. Chisolm?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well.

(Court's Exhibit No. 7, jury note, was marked.)

THE COURT: Now, don't be concerned. You get to see these photographs during deliberation. Yes, you do.

All right. Now, you may proceed.

MR. CHISOLM: Thank Your Honor.

BY MR. CHISOLM:

Q Mr. Gallardo, do you recognize this document?

A Yes, I do.

Q And what is this document?

A This is the statement I gave to the detectives.

Q All right. Could you tell me the answer on question -- could you read question number four and the answer for me?

MR. HILTON: Objection, Your Honor.

THE COURT: Yes.

MR. HILTON: If he wants to admit that into evidence he can proceed that way.

THE COURT: Yes.

MR. CHISOLM: I'll admit that into evidence, Your Honor.

THE COURT: Any objections?

MR. HILTON: No objection.

THE COURT: Very well. I think it's marked for identification purposes. It will be Defense Exhibit No. 4 in evidence without objection. It is a one or two page documents.

MR. CHISOLM: Two page document, Your Honor.

THE COURT: Two page document. Thank you.

(Defendant's Exhibit No. 4, document was marked and entered.)

A You want me to read it?

BY MR. CHISOLM:

Q Yes, question and answer number four.

A Okay. Question: Can you tell me what items the customer was looking for. Answer: He wanted the seat trim, the seat belt, back part of the seat.

Q The fourth question answer.

A Okay. Did the customer tell you why -- I can't read his writing -- No, he needed the left seat top part.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. Redirect?

GEORGE GALLARDO - REDIRECT EXAMINATION

BY MR. HILTON:

Q Mr. Gallardo, if you're standing at the front of the vehicle and you're looking at it, what side is the passenger seat on?

A That would be the right side.

Q If you're standing at the front of the vehicle and looking at it.

A It would be the left side.

Q If I'm standing at the back of the vehicle and looking at it which side would it be on?

A It'd be on your right side.

MR. HILTON: No further questions, Your Honor.

THE COURT: Very well. Recross.

GEORGE GALLARDO - RE-CROSS EXAMINATION

BY MR. CHISOLM:

Q What you were saying before was the right seat, correct?

A Right.

Q So if you were standing in the front of it and you pulled the right seat it would be the driver's seat, correct?

A No. It would be the passenger side.

Q If you were standing in front of the car, the vehicle, and you pulled the right seat?
A It would be the left.
Q If you're looking at the vehicle, sir?
A If I'm looking at the front of the vehicle --
Q And what seat.
A -- and this will be your left side, and this will be your right.
Q Okay. So what seat would be on my right side?
A That would be your left. That would be the passenger side, which is the left. Looking at the front of the vehicle, it would be the left.
Q Sir, I'm asking you what seat is on my right side?
A Right side would be the driver's side.
Q Thank you, sir.
THE COURT: All right. May this witness be excused?
MR. HILTON: Fine with me, Your Honor.
THE COURT: And any objection?
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well. Thank you, sir.
Call your next witness.
MR. HILTON: State would call Thomas Simonelli.
THE CLERK: Please raise your right hand. State your full name for the record.
MR. SIMONELLI: Thomas Gerard Simonelli.

THE CLERK: Could you spell your last name please.

MR. SIMONELLI: S, as in Sam; I-m, as in Michael, o-n-e-l-l-I.

(WHEREUPON, Thomas Simonelli was sworn to tell the truth.)

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

THOMAS SIMONELLI - DIRECT EXAMINATION

BY MR. HILTON:

Q Mr. Simonelli, where are you living now?

A Orangeburg Road, Azalea Park, 527 Orangeburg Road.

Q Okay. And where were you living back in September, 2007?

A Across the street from that subdivision, 572 Orangeburg Road.

Q Okay. Is that an apartment complex or --

A No. Where I was living back --

Q Across the street.

A Across the street, that was a private home. Where I live now is an apartment complex.

Q Do you know the defendant, Mr. Chisolm, in this case?

A Yes, I do.

Q How do you know Mr. Chisolm?

A I used to have a drug problem. He sold me drugs.

Q Okay.

MR. CHISOLM: Objection, Your Honor.

THE COURT: Basis as articulated, earlier?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well. Overruled.

BY MR. HILTON:

Q Do you recall getting a phone call from Mr. Chisolm around Friday September 14, 2007 in reference to a vehicle seat?

A Yes, I do.

Q What was that about?

A He asked if I could buy him a seat from a junk yard, if I had a credit card around to do that.

Q Do you remember what junk yard that was?

A I want to say it was like LKQ. It was three letters.

Q Okay.

A I don't really remember. I think it was LKQ.

Q And you said something about a credit card?

A Yeah.

Q What was that about?

A He said, I said well, how would I pay for that, would I come there or something. He said -- this is as far as I can remember, okay. And he said no they'll take it. I think he put on -- If I remember, okay, it was a long time ago, put on the gentlemen that worked there. I asked my wife do we have anything I could give to them. So she handed me

something and I read it to them and called back about five minutes later, I want to say, and they said it was no balance left on it or credit left to pay for the seat.

Q You said you read it to him. What are you reading to him?

A The numbers, I believe it was.

Q On what?

A On the card. Sorry about that.

Q You said that card was declined?

A Yes. That's exactly the word I'm looking for. Thank you.

Q And who was the person asking you to buy this seat?

A Well, his nickname. I didn't even know his real name, was Pop, this gentlemen here, Donsurvi Chisolm.

MR. HILTON: Let the record reflect that the witness pointed out the defendant.

THE COURT: Very well.

BY MR. HILTON:

Q How was he going to pay you back for this seat?

A Well, I had owed him some money and we had that kind of relationship, because I was doing reasonably well back then, not emotionally or spiritually, obviously, I had a drug problem. So he -- we had a relationship where he trusted me and I always kept my word with him. I said I'd pay him the next day a $100 or something like that. And so I owed him

some money, so I said we'll squash the bill. Again, this is going off what I can remember. And -- and trade some more cocaine or something like that. Needless to say, it didn't work out anyway.

Q Please answer any questions Mr. Chisolm may have for you.

THE COURT: Cross-examination.

MR. CHISOLM: Yes, Your Honor.

THOMAS SIMONELLI - CROSS-EXAMINATION

BY MR. CHISOLM:

Q How you doing, Tom?

A Okay.

Q All right. You said we had a pretty solid relationship, yes.

A Yes, sir.

Q And I trusted you?

A Yes, sir.

Q You trusted me. We were good?

A Yes, sir.

Q Okay. Have you ever helped me make any other alterations to my vehicle?

A No.

Q You didn't help me purchase two front tires from Gerald's Auto?

A No.

Q On Dorchester Road?

A No.

Q One week prior to you helping me to buy the passenger seat?

A No, not that I can remember.

Q That's --

A I'll have to ask my wife. She's the one with the brains in the family. I'll ask her when I go home. I don't remember that, no.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Okay. Redirect?

MR. HILTON: No, redirect, Your Honor.

THE COURT: All right. And is this witness free to leave?

MR. HILTON: He is.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: You are free to go.

Call your next witness.

MR. HILTON: Your Honor, at this point, I would ask that we take our afternoon break. I need to really check to see who's here, as far as witnesses go.

THE COURT: All right. We'll take about 15 minutes.

Step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. Smokers, smoke. 15

THE CLERK: Thank you.

THE COURT: All right. Okay. Good afternoon.

MR. CARREIRO: Good afternoon.

THE COURT: All right. Your witness.

MR. HILTON: Thank Your Honor.

THE COURT: Uh-huh. (Affirmative response.)

CHRIS CARREIRO - DIRECT EXAMINATION

BY MR. HILTON:

Q Mr. Carreiro, where are you employed?

A Hoover Automotive in Summerville, South Carolina.

Q And how long have you worked there?

A Thirteen years.

Q And what's your job at Hoover Automotive?

A I'm the shop foreman.

Q And do you work with a guy named Brian Sutherland?

A I do.

Q Okay. And does he have a similar job?

A He does.

Q And as shop foreman there at Hoover Automotive, what type of job training for that?

A Multiple Chrysler schools on (inaudible) systems on Dodge, Chrysler and Jeep products.

Q And let me show you what's been marked as State's Exhibit No. 6 and entered into evidence. Is this a Dodge product?

A It is.
Q Do you recognize what product that would be?
A It's a Dodge Durango.
Q Now, as far as your training and so forth, do you have any training that's specific to restraint systems?
A I do.
Q Restraint systems in Dodge products?
A I do.
Q And just briefly can you go through some of that training?
A I've probably been to just about every passive restraint, active restraint school that Chrysler offers.
Q And are there different levels of certification within Chrysler?
A There are. Level IV is the highest certification. I have a Level IV.
Q Now, the seatbelts in today's cars, are they a little more than just a hook and a strap?
A They are.
Q And does your training cover those mechanisms?
A It does.
MR. HILTON: Your Honor, at this time we'd offer Mr. Chris Carreiro, as an expert in Dodge personal restraints.
THE COURT: All right. Voir dire?
MR. CHISOLM: I have no objection, Your Honor.

THE COURT: Very well. He is so qualified.

BY MR. HILTON:

Q Mr. Carreiro, let me show you what's been marked for identification as State's Exhibit No. 25, and just ask if you'll take a look at this?

A Uh-huh. (Affirmative response.)

Q What is that item?

A It is a seatbelt mechanism out of a Dodge product.

Q All right. Were you asked by the Sheriff's Office to take a look at that item previous to court today?

A Yes.

Q All right. And were you able to examine it?

A I was.

Q And what can you tell by looking at that seatbelt as far as it's performance and whether it's broken or not?

A It's not broken. It's fully operational. Apparently the pre-tensioner has not been deployed.

Q All right. Let's talk about some of the parts in a seatbelt.

A Okay.

Q What makes a seatbelt, you know, I pull my seatbelt in my car real fast, what makes it lockup?

A There's a mechanical inertia switch in the side of the seatbelt. The G-forces going forward, will keep the seatbelt locked and then as the G-forces are gone it will

retract.
Q All right, and is there any other electrical device or any type of device that will cause a seatbelt to lock up?
A There is.
Q How does that work?
A The actual -- it applies 12 volts in a ground to it when the vehicle is in an accident and explodes a little pre-tensioner in here which pulls it back away from the air bag.
Q Does that cause any damage to the seatbelt?
A It does. It melts all the plastic inside.
Q All right. Does it cause the seatbelt to lock up?
A Yes.
Q All right, and even after the wreck will the seatbelt still be locked up?
A Yes.
Q And in your examination of the seatbelt mechanism we're talking about here, does it appear that the pre-tensioner has any damage to it?
A It does not.
Q Does it appear to have gone off?
A No.
Q And what makes this pre-tensioner go off?
A There's a tiny explosive charge inside here when it applies 12 volts in a ground and explodes the charge, and

excessive heat melts the connector on it and also melts the mechanism on the inside.

Q And does it work like in connection to like the air bags and so forth?

A It does.

Q And are you able to spin the reel on the seatbelt?

A I can. (Demonstrates.)

Q Okay, and why is it if you turn it upside down it might not, might not move, but if you turn it the right way it will work?

A The mechanical part of it is what keeps it from doing it. It will actually work mechanically when it's right-side up. When it's upside-down it will not.

Q Okay. Now, is there anything wrong with that seatbelt mechanism?

A Seems to be fully operational.

Q If I hooked that mechanism up in my car right now would I be able to put on my seatbelt?

A Except for the cut it would be one thing.

Q Okay. Where is that device located in a 2006 Dodge Durango?

A It's located in the B pillar, right behind the passenger seat.

Q Let me show you what's been marked for identification as State's Exhibit No. 9, and ask if you recognize what that

is in a car?
A That is actually the B pillar.
Q And is that an accurate picture of one of them?
A It is.
Q And does this picture display where the seatbelt mechanism is located?
A It is.
MR. HILTON: Your Honor, at this time, we'd offer State's No. 9 into evidence.
THE COURT: And have you --
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well. Exhibit No. 9 in evidence without objection.
(State's Exhibit No. 9, photo, was marked and entered.)
BY MR. HILTON:
Q Mr. Carreiro, if I'm sitting in the passenger seat of a car, the item that's displayed in the picture, where would that be located, with regard to me, if I'm sitting in the passenger seat?
A It would be to your right behind you.
Q And would that be the passenger seatbelt?
A It would be.
Q All right. And with regard to State's Exhibit No. 25, the seatbelt mechanism, in order to cut this strap as close

as this one is cut, how would you have to do that?
A You'd have to remove the lower pieces, the trim is already removed right there.
Q Okay. The strap that is remaining in that seatbelt spool, would that be enough strap to stick out of the top of the B post trim?
A No, sir.
Q And that trim, does it just fall off?
A No, it actually is snapped in, and there's two pieces of sill plate to hold it in the bottom.
Q In your course of working at Hoover Dodge, have you ever seen a lot of problems with seatbelts being torn or cut?
A They're pretty strong.
Q Have you ever seen one that was cut below the trim of the B post?
A No.
Q In your opinion as an expert in Dodge personal restraints is that seatbelt mechanism in working order short of the strap being cut off of it?
A It is.
Q Please answer any questions Mr. Chisolm may have for you.
THE COURT: Cross-examination?
MR. CHISOLM: If I can have one second, Your Honor?

THE COURT: You may.

(Mr. Chisolm confers with Mr. Loy.)

CHRIS CARREIRO - CROSS-EXAMINATION

BY MR. CHISOLM:

Q You said the seatbelt, the seatbelt has -- could you describe the tension that --

A The pre-tensioner?

Q Yeah, the tension that would be on the belt?

A There is always going to be tension like when you lean forward it will lock in place. So a pre-tensioner is deployed it will actually pull you back to the back of the seat.

Q Now, if you're pressing the release mechanism on the seatbelt and it's retracting, how much -- what type of force is the seatbelt being pulled back with, is there --

A How much force if you just release it?

Q Yes.

A Allowing the spring to retract it?

Q Yeah. How --

A What happens is when you let it go there's an actual spring in there that retracts it, but it's at a slow rate of speed. It's got to be a fast rate of speed in order to lock it.

Q But it retracts it when it's -- when it's coming through the seatbelt guide --

A Uh-huh. (Affirmative response.)
Q -- would it be rubbing against the seatbelt guide?
A Yes.
Q Okay. How, if you could describe the pressure, I guess, like a touch, a rub. How much pressure would the seatbelt have on the seatbelt guide as it's coming through the seatbelt guide?
A Minimum.
Q Minimum. So it's like --
A I don't know the exact pressure, but, I mean, it's very minimal.
Q Okay.
MR. CHISOLM: I'd like to let him review this picture, Your Honor.
THE COURT: Very well. Have you showed it to Counsel? And let's mark it for identification purposes.
MR. CHISOLM: Yes, Your Honor.
(Defendant's Exhibit No. 5, photo, was marked for ID only.)
MR. HILTON: Can I see the picture?
(Photo shown to Mr. Hilton.)
BY MR. CHISOLM:
Q Now, in this seatbelt guide -- well, the amount of space is pretty small. Would the seatbelt rub against the lower part or the top part or both?

A The lower.
Q The lower part. You said it would brush against it?
A Right. (Nods head in the affirmative.)
THE COURT: That's a yes?
A Yes.
MR. CHISOLM: I have no further questions.
THE COURT: Very well. Any redirect?
MR. HILTON: No redirect.
THE COURT: Is this witness free to leave?
MR. HILTON: Yes.
MR. CHISOLM: Yes, Your Honor.
THE COURT: Very well. You are free to go.
Call your next witness, please.
MR. HILTON: State would call Det. Allison Greer.
THE CLERK: Please raise your right hand, state your full name for the record.
MS. GREER: Allison Greer.
(WHEREUPON, Allison Greer was sworn to tell the truth.)
THE CLERK: Thank you.
THE COURT: Your witness.

ALLISON GREER - DIRECT EXAMINATION

BY MR. HILTON:
Q Is it still Det. Greer or is it Ms. Greer now?
A Ms. Greer, now.

Q All right. Are you still working with the Sheriff's Office?
A I do.
Q In what capacity is that?
A I am a part-time administrative assistant.
Q All right. And back in 2007, what were your duties with the Sheriff's Office?
A I was an investigations.
Q Okay. Why are you now in administration?
A I'm medically retired from law enforcement.
Q Okay. And how long did you work for the Sheriff's Office?
A From -- I was hired in 1996. I became a certified officer in 1998, and I worked until 2009.
Q All right. So I think you said back in 2007, you were with what department?
A Investigations.
Q Okay. And were you involved in the investigation of Mr. Chisolm for the murder of Craig Canady?
A I was.
Q And I said involved in the investigation of Mr. Chisolm, did it only involve Mr. Chisolm?
A No, it did not.
Q Let me turn your attention back to September 27, 2007, was that the day that the Sheriff's Office learned that Mr.

Chisolm has changed his seat out?
A Yes, it was.
Q And how were y'all able to get that information?
A Through telephone records and through speaking, I believe, with LKQ.
Q Okay. Now, after you learned that information what was your role in the investigation with regard to the seat?
A I was requested to go to the landfills and recycling centers located within Dorchester Counties to attempt to gain any information on the possibility of a seat being picked up or taken to the trash dumps.
Q And did you do that?
A I did.
Q How many places would you say you went?
A I went to the Oakridge landfill, which is the main landfill here in Dorchester County. I went to Dorchester County Public Works to actually run the recycling centers throughout the county to try to obtain information as far as cameras or anything that would be at the different sites that we might obtain video from. I also went to BJ's Recycling, which is anything from metal that is picked up at the other recycling centers in Dorchester County goes there where it is crushed and sent to Lexington. I think I went back to Oakridge landfill for a second time.
Q Were you able to locate a seat?

A We were not.
Q Let me turn your attention back to October 19, 2007, was there a time when you talked to Mr. Chisolm about the seat in his car?
A Yes, sir, it was.
Q And where was that?
A That was at the Haven Oaks apartment complex.
Q And how did that interaction take place?
A I was actually riding with Det. Walsh, and we were patrolling through the Haven Oaks area, and Mr. Chisolm flagged our patrol vehicle down and approached our vehicle.
Q Okay. And did y'all ask him any questions or he volunteered information or what?
A Actually, he inquired on when he could obtain his vehicle back.
Q Okay. And what else did he ask you or tell you?
A We advised him at that point in time that he would have to contact crime scene at the Sheriff's Office to obtain information on when he could get his vehicle back. We asked him about his seat. The front passenger seat in his vehicle. At which time he stated that he had changed out the vehicle seat because it had burn holes in it when he had obtained it from his brother and sister. That he had called LkQ and asked about the seat, a replacement seat, as well as a seatbelt for the vehicle.

Q Did he say anything about the seatbelt not being in the car?

A He said it wasn't there when he got the vehicle, when he's obtained it from his brother and sister.

Q In that conversation did Mr. Chisolm tell you or was there any conversation about phone calls being made the night of September 13, 2007?

A Yes, sir. I believe we asked him in reference to when he was riding around with the victim and Mr. White, if any phone calls were made, and he stated that the only person that -- the victim had called was (inaudible), that he was unaware of any other phone calls, but the music was loud, but we could always check phone records.

Q He told you to check phone records?

A Uh-huh. (Affirmative response.) Yes, sir.

Q All right. Let's fast forward a little bit. Was there a time when the Sheriff's Office learned about the location of the murder weapon in this case?

A Yes, sir. November 16, 2007.

Q Was that when David White came forward?

A Yes, sir.

Q As part of the Sheriff's Office and part of the investigation, did you have any other duties at the Sheriff's Office at the time?

A Yes, sir. I was also part of the dive team, recovery

team.

Q And were you asked to utilize your skills as a diver with regard to this case?

A Yes, sir, I was.

Q And what location were you asked to look in?

A We were requested to dive the area on Bacon's Bridge Road where the Ashley River crosses over Bacon's Bridge.

Q And I guess your dive team, is it just you or a group of folks or what?

A No. There are several people that are on the dive team. We also notified Charleston County and requested their assistance, because even though we have several people not everybody may be able to dive at that point in time.

Q And is it common place for agencies to help each other with the dive team?

A Yes, sir.

Q And on November 16, 2007, did you search the area at Bacon's Bridge Road?

A We did.

Q Were y'all able to find anything on the 16th?

A No. Actually on the 16th, we did recover a long gun, like a rifle or a shotgun.

Q Did that have anything to do with this crime?

A No.

Q And did y'all go back on the 19th?

A We did.
Q And did y'all find anything on the 19th?
A We did. We were able to locate a 22 caliber Browning Buck Mark Semi-automatic pistol.
Q And when you found that pistol, how did y'all go about collecting it?
A Basically, it was photographed in the water in which it was found and then it was collected in the same water into a cooler. The weapon is never lifted outside of the water that it is located in.
Q What's the purpose of that?
A Basically, once you remove that weapon out of the water, oxidation starts to occur on that weapon, which can interfere with any type of examination that's going to be done further on the weapon.
(State's Exhibit No. 26, photo, was marked for ID only.)
(State's Exhibit No. 27, photo, was marked for ID only.)
BY MR. HILTON:
Q Let me show you what's been marked for identification as State's Exhibit No. 26, and ask if you recognize that?
A Yes, sir, I do.
Q What is that?
A That is actually a picture from divers from Dorchester

County as well as Charleston County there at the Bacon's Bridge/Ashley River area where we located the weapon.

Q Is this the dive we've been talking about?

A Yes.

Q Is that an accurate photo of y'all diving that day?

A Yes, sir.

MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit No. 26 into evidence.

THE COURT: Any objection?

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. In evidence without objection. It is a photograph.

(State's Exhibit No. 26, photo, was marked and entered.)

BY MR. HILTON:

Q And let me show you what's been marked for identification as State's Exhibit No. 27, and ask if you recognize that?

A Yes, sir, I do.

Q What is that?

A That is a photograph that I took of the weapon, the 22 caliber located in the water.

Q And that's the gun that y'all recovered in relation to this offense?

A Yes, sir, it is.

Q Is that an accurate photograph of that weapon?
A Yes, sir. That is untouched.
MR. HILTON: At this time, we'd offer State's Exhibit No. 27 into evidence.
THE COURT: And have you showed it to Mr. Chisolm?
MR. HILTON: I did.
THE COURT: Any objection?
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well. State's Exhibit No. 27 in evidence without objection. It is a photograph.
(State's Exhibit No. 27, photo, was marked and entered.)
BY MR. HILTON:
Q Let me show you what's been marked for identification as State's 14, and just ask if you recognize this item?
A Yes, sir, I do.
Q What does this appear to be?
A That appears to be the same weapon that we located.
Q Is this the weapon depicted in those pictures we just looked at?
A Yes, sir, it is.
MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit No. 14 into evidence.
THE COURT: Yes. Any objection?
(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, there's nothing particularly unique about this weapon. How can she be so sure that that's the weapon we're talking about. I object. No foundation.

THE COURT: All right. Is there any additional foundation?

MR. HILTON: I guess if there needs to be.

THE COURT: Well, --

MR. HILTON: I can offer limited argument.

THE COURT: Step to your jury room. Do not discuss this matter with anyone or allow anyone to discuss it with you.

(Jury out at 3:55 p.m.)

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

THE COURT: Yes.

MR. HILTON: The co-defendant, David White, during his testimony looked at the gun, identified it, which was then marked for identification, State's Exhibit No. 14. He said that that appeared to be the murder weapon the victim was shot with. The defendant pulled the trigger on, I think was his testimony, and used to kill the victim in this case. At that time it was not offered into evidence. It was only marked for identification. Subsequent to that, we now have Det. Greet on the stand. We've introduced photographs, State's Exhibit No. 27, which depicts what appears to be an identical gun in the water found at the location where the

co-defendant said the gun would be. So we've tied it to the crime through the co-defendant. Det. Greer testified just moments ago that this appears to be the gun that she pulled out of the water, and the gun that is photographed on State's Exhibit No. 27.

It's certainly relevant. State would propose the foundation has been laid for the gun to be admitted into evidence.

THE COURT: Let me ask you this question. Once of the concerns that I have is that -- and I would have no concern if there was a serial number identified at the scene where it was found as opposed to any sort of serial number or identification on the gun itself. I'm a little bit concerned about that. Of course, there hadn't been any kind of chain of custody. I don't even know where it's been kept.

MR. HILTON: Your Honor, if I may briefly respond to that.

THE COURT: Sure.

MR. HILTON: It's a gun. It's not a fungible item. Case law is pretty clear that on non-fungible items that there is no chain of custody that needs to be proved as long as the witness says this is the gun that is in the same appearance and condition it was the date that it was recovered.

MR. CHISOLM: Your Honor, there's a proper procedure that they would do. As you said, they record serial numbers. They put it in the evidence bag, number it, sign it, same way -- when they offered the projectile to the coroner, it was marked, that they know exactly where it came from. To follow the chain of custody, Your Honor.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: As far as tying it to David White, he was high on cocaine, freaked out, he was in a dark car. They found another gun inside the lake as well.

MR. HILTON: And that would be weight, not admissibility.

THE COURT: All right. Let me just reiterate the evidence I've heard regarding the gun.

The co-defendant, Mr. White, said the gun was consistent and looked like the gun he remembered seeing. And this witness has testified that she was on the dive team when the dive team recovered the gun, participated in the taking of the photographs and has not said that this gun looks like the gun, but, in fact, has said that this is the gun.

MS. GREER: I said it appears. It appears.

THE COURT: Appears. It appears to be the gun.

I need more foundation.

MR. HILTON: All right.

THE COURT: Thank you.

Sustained.

MR. CHISOLM: Thank Your Honor.

THE COURT: Uh-huh. (Affirmative response.)

You may proceed.

MR. HILTON: There's no jury.

THE COURT: Oh, God, what am I doing. Focus is like -- you're right. Thank you. No, I'm not up here thinking hard.

Shall we have a jury. Please let us have a jury.

Thank you. Sorry.

THE BAILIFF: Judge, before I bring them in, they want the blinds dropped all the way down so they can see better.

THE COURT: Okay.

THE BAILIFF: I'll do that before I bring them back.

THE COURT: Okay. I was going to just call both sides attention to a particular case. The cite is 366 SC 125.

THE BAILIFF: Okay. Thank you.

(Jury in at 4:07 p.m.)

THE COURT: All right. You may continue.

MR. HILTON: Thank you.

ALLISON GREER - CONTINUED DIRECT EXAMINATION

BY MR. HILTON:

Q Det. Greer, we were talking about State's Exhibit No. 14, that's marked for identification at this point. Let me just show you this gun here. Are there any unique markings

or identifications on that gun that where you know that that was the gun that was pulled out of the river?

A May I see the picture?

(Photo passed to witness.)

A The biggest one that stands out to me, obviously, would be the gold trigger on the gun. And as far as the handle grip, it would appear to be the same shape.

Q All right, and you were present when the gun was actually pulled out of the water, correct?

A Yes, sir. We actually placed the gun, myself and another deputy diver with Dorchester County actually placed the cooler down in the water and gently placed the gun into the cooler along with the water that flows -- you know, went into the cooler, lifted it upright, closed it. I carried it out of the river, up the bank and handed it off to Det. Zensen, who is the crime scene investigator evidence custodian.

Q Okay. Why all that trouble about the cooler?

A Because it has to stay in the water. You cannot lift it out. Once you take it out of the water to examine it, to look at it to try to obtain a serial number, the rust and oxidation starts occurring to the gun and it can interfere with SLED's examination of the weapon.

Q Is that why you weren't able to write down a serial number?

A That is correct.
Q Okay. And does the gun have any unique markings where it started to corrode or anything?
A Yes. Sure. Once you look at the barrel across the top here, all these marks would be the starting of corrosion on the weapon. Once it's taken out, you can look at the screws that hold the gun together, they've started to rust. If it's removed out -- you can look down in it and tell rust has started.

(State's Exhibit No. 28, cooler, was marked for ID only.)

BY MR. HILTON:
Q Let me show you what's been marked for identification as State's Exhibit No. 28. Do you recognize this item?
A Yes. That would be a cooler we would use to collect the weapon at the Dorchester County Sheriff's Office.
Q And is this the cooler that you put the gun into when you recovered it from the river that day?
A Yes, sir.
Q And when you put the gun in the cooler, what did you do with it at that point?
A I immediately left the water, went up the bank to the top of the bridge where Det. Zensen was standing awaiting for the cooler. She would have taken that photograph from the bridge.

Q Were you able to get a good look at the gun when you pulled it from the water or when it was pulled from the water?

A Once it was put into the cooler and, you know, in plenty of water, as far as it looks in a white cooler there, yes.

Q And were you able to tell if there was any corrosion on the gun at that time?

A It wasn't handled, it wasn't examined, because it was -- you want to keep evidence like that pristine. You don't want to handle it any more than you have to until it get to where it's going, which would have been SLED for examination.

Q How popular is a Browning Buck Mark 22 long rifle pistol?

MR. CHISOLM: Objection, Your Honor. No foundation.

MR. HILTON: I'll withdraw the question.

BY MR. HILTON:

Q The gun that y'all recovered from the river, do you remember whether it had a magazine in it that day?

A It did not.

Q Does this gun have a magazine in it?

A No, sir, it does not.

Q Were y'all able to find the magazine in the river?

A No, sir, we were not.

Q Do you know whether the gun was loaded or not when you found it?

A I was unable to handle it, so there's no way for me to see if the chamber was loaded.

Q All right. Please answer any questions Mr. Chisolm may have for you.

THE COURT: Cross-examination?

MR. CHISOLM: Yes, Your Honor.

ALLISON GREER - CROSS-EXAMINATION

BY MR. CHISOLM:

Q You said while on patrol in Haven Oaks I flagged you down, correct?

A Yes, sir.

Q And I asked about my vehicle, correct?

A That is correct.

Q And you told me to contact crime scene, correct?

A That is correct.

Q Now, if I only want my vehicle in this conversation -- if I only wanted my vehicle at the time, the conversation could have stopped and I could have left, correct?

A That is correct.

Q But the conversation didn't stop did it?

A No, it did not.

Q And I started to provide you all with more information to help you further your investigation, correct?

A You provided further information.
Q Okay. And I informed you that the seat was changed out?
A Yes, you did.
Q Did I inform you all that I had plans to change out both seats.
A You said that when you had gotten the vehicle it was in bad condition and that the seat which you had changed had burn holes in it and there was no seatbelt.
Q But did I inform you all that I intended to change out both seats?
A I don't remember -- Yes, you did. You said that you wanted to change out both seats in the vehicle.
Q All right. Did I inform you all that the person that had attempted to help me purchase the seats had actually purchased two new tires for me a week prior to the seat purchase?
A You did mention that Mr. Simonelli had purchased front tires, paid for front tires for your vehicle.
Q Did I tell you all where the tires were purchased so that you could verify the info?
MR. HILTON: Objection, Your Honor. At this time, I think he is essentially testifying.
THE COURT: Is it contained in the statement?
MR. CHISOLM: Yes, Your Honor.

MR. HILTON: On that ground, I'd object to self-serving hearsay.

MR. CHISOLM: Your Honor --

THE COURT: I'm prepared to rule.

MR. CHISOLM: Oh, sorry.

THE COURT: If it's in the statement, if it is in the statement, or in the report, I'm going to allow it.

MR. CHISOLM: Thank Your Honor.

THE COURT: Uh-huh. (Affirmative response.)

BY MR. CHISOLM:

Q Did you all verify this purchase?

A You said that you had obtained the tires from Gerald's Tires and you provided that information.

Q Did you attempt to verify that?

A I did not. I was not the lead investigator on this case.

Q Okay. Did I provide you all contact info on the previous damage, so that they could verify previous damage verbally and through insurance claims that pre-dated me coming into possession of the vehicle?

A You provided a telephone number for your sister. You did not provide the telephone number for your brother. You also called your mother while we were on scene and I spoke to your mother who verified you changed out the seat in her front yard.

Q Okay. And you all asked me what day I changed out the seat, correct?

A That is correct.

Q All right. And actually, you skipped forward a little bit. I told you all -- who saw me change out the seat correct, because you all asked me if anybody saw me change out the seat?

A Yes, and you provided your mother's name.

Q And I told you my mother --

A Uh-huh. (Affirmative response.)

Q When asked would my mother confirm this did I immediately call my mother and ask her to speak with you all?

A Sure.

Q Okay. And you said she verified it?

A Correct.

Q Okay. Did you ask me where I discarded the old seat?

A I believe Det. Walsh asked you that question, yes, sir.

Q Okay, and did I tell her?

A You said at the Old Fort dump site and it was closed.

Q Okay. And I told you all of this -- I told you this of my own free will, correct?

A Yes, you did.

Q Okay. All right. And you all asked me to verify phone calls that may or may not have happened that night, correct?

A That's correct.
Q And that is when I said check the phone records, because my memory -- I didn't want to halt your investigation on account of my memory, and I wanted you to check the phone records to alleviate any doubt; is that correct?
A I can't answer why you --
Q Okay. I'm sorry. I'll rephrase my questions. All right, now, in regards to the Old Fort dump site, you said you all investigated the Old Fort dump site, you went to the Old Fort dump site?
A I did not go to the Old Fort dump site. Det. Giglio and Det. Walsh went to the Old Fort dump site. I went to the Oak Bridge Landfill, B.J.'s Recycling Center and to Dorchester Public Works.
Q Okay. Could you tell me if it was ever determined if the Oak Brook dump site was searched for the seat?
A The information that I obtained from Oak Bridge landfill, there are no cameras located at the recycle centers that are located throughout Dorchester County. Fennel Container Company comes in and loads up those trash dump sites. They are then taken to the Oak Bridge landfill where it is immediately smashed beyond recognition and placed into what is called cells. Those cells located by GPS for -- depending on what location they are picked up

from. Those sites are -- once they are full they are then covered and they go on to the next cell. So once I talked to you, Mr. Muckenfuss at the Oak Ridge landfill, even if we had decided to try to use search in one of these cells for any type of seat it would have been unrecognizable.

Q You said that seat would be flattened?

A That seat would be unrecognizable.

Q Okay, but in your opinion would a flattened -- this is a very large car seat, would a flattened car seat look like anything other than a flattened out car seat?

A I can't answer that, sir --

MR. HILTON: Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q But the site was never searched, correct?

A That's correct. At the Oak Bridge land site.

Q Okay. As a homicide detective, well, when you were a homicide detective, I'm sorry --

A Actually, I was a general investigator.

Q General investigator. Did you do any work with weapons, with guns?

A I did some work with guns when I was a forensic investigator for six years.

Q And as a forensic investigator, can bullets be matched back to weapons?

MR. HILTON: Objection.

THE COURT: A word or two.

MR. HILTON: Foundation.

THE COURT: Sustained.

MR. CHISOLM: I have no further questions, Your Honor.

THE COURT: Very well. Redirect.

ALLISON GREER - REDIRECT EXAMINATION

BY MR. HILTON:

Q You say you didn't search the Oak Ridge Landfill; is that correct?

A I did not.

Q And why was that?

A Because when any type of trash is brought in it's automatically squashed by heavy machinery, and it's been placed into cells, which are big dug out holes in the dirt. They're dumped in and then once that cell is full it is -- dirt is pushed back over it and they go dig another cell and dirt is placed there. And once I spoke to Mr. Muckenfuss, who is the district manager for the entire area for the Oak Ridge Landfill, he said it would be no need, because it would be unrecognizable even if we were able to search it.

Q Did he give you any information as to how many pounds or tons of trash and dirt would be over the top if it had been there?

A I believe -- let me look here at my notes -- He said

approximately 40 tons of trash had been dumped in the new cells where these dump site would have -- where this trash would have gone.

Q Thank you.

THE COURT: Any recross?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right.

ALLISON GREER - RECROSS EXAMINATION

BY MR. CHISOLM:

Q Can you tell me how long you were a forensic investigator?

A Six years.

MR. HILTON: Your Honor, I'm going to object at this point. I think it's outside of the scope of the cross-examination.

THE COURT: It is outside the cross -- the scope of the redirect.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Very well. Anything further?

MR. CHISOLM: No, Your Honor.

THE COURT: All right. May this witness be excused?

MR. HILTON: She may, Your Honor.

THE COURT: Any objection?

MR. CHISOLM: I have no objection, Your Honor.

THE COURT: Very well. You're free to go. Thank you.

Call your next witness.

MR. HILTON: Your Honor, we have, I guess, about 30 minutes left in the work day. My next witness is, I think, will be somewhat lengthy. I'll just inform the Court of that and if we need to call we will.

THE COURT: Okay.

MR. HILTON: I will add that we have that witness and probably maybe three more after that.

THE COURT: All right. I think I'd like to begin, even if it's just preliminary matters. Perhaps get just the preliminary matters done. That would be -- you know, up to a point. I'd like to at least begin. I'd like to continue to use the benefit of the day.

MR. HILTON: State would call Jamie Zensen.

THE COURT: All right.

THE CLERK: Please raise your right hand. State your full name for the record.

MS. ZENSEN: Jamie Zensen.

THE CLERK: Could you spell your first and last name, please?

MS. ZENSEN: Jamie, J-a-m-I-e. Zensen, Z-e-n-s-e-n.

(WHEREUPON, Jamie Zensen was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

JAMIE ZENSEN - DIRECT EXAMINATION

BY MR. HILTON:

Q Det. Zensen, where are you employed?

A Dorchester County Sheriff's Office.

MR. HILTON: Bear with me just a second.

THE COURT: Sure.

BY MR. HILTON:

Q How long have you been working at the Sheriff's Office?

A Since 1999.

Q And prior to 1999, where were you employed?

A Palm Beach, Florida.

Q And what did you do there?

A Evidence technician.

Q How long did you work in Palm Beach, Florida?

A From '92 to '98.

Q Were you working with the Sheriff's Office around September 15, 2007?

A Yes, sir.

Q And were you asked to respond to a call on September 15, 2007, out at the Clubhouse Road area of Dorchester County?

A Yes, sir.

Q And was that in the capacity of a crime scene technician?

A Yes, it was.
Q And when you got to the scene, what did you do?
A I met with the Lt. Asbell and Deputy Dandridge in reference to a body located in the canal.
Q Had they secured the scene when you got there?
A Yes, sir, it was secure.
Q Okay. And did you have the opportunity to process that scene?
A Yes, sir. I photographed it and marked evidence that was located on the side of the road; beer cans, a pacifier, a couple of cigarette butts, and photographed the body.
Q And as far as that evidence you collected, when you collected it what did you do with it?
A I collected it and I secured it in my vehicle.
Q Okay, and at some point in time was that sent somewhere for analysis?
A The cigarette butt and the pacifier was sent to SLED for DNA testing. The beer cans were processed in our lab for latents.
Q And did anything become of that evidence?
A No.
Q When you say no, was it processed?
A Yes. It was processed for latents. We did not recover any latents from the beer can. The pacifier did come back with a DNA profile matching the victim.

Q You say you were able to take some photographs of the scene that day?
A Yes, sir.
Q What is the purpose of that?
A For documentation purposes. If we had to reconstruct, we could.
Q And the photography. Do you do other things and then take photography or is that an order to your processing?
A We photograph the overall scene, and then we'll go back over the scene. We will mark the evidence. We will photograph overalls of the evidence with the markers, showing the placement of where everything is at, and then at which point we will then start to do individual close-ups of each piece of evidence that we're collecting.
Q Let me show you what's actually be entered into evidence as State's Exhibit No. 5, and just ask if that's an overview of the scene?
A Yes, sir, it's an overview.
Q Is that one of the pictures that you took when you got there?
A Yes, it is.
MR. HILTON: Your Honor, at this time, I'd publish this to the jury.
(Photo published.)
BY MR. HILTON:

Q Can you just kind of describe what we're seeing there, Det. Zensen?

A Yes, sir. Right here is the roadway -- you can't really see it --

THE COURT: Hold on one second. We can give you an annotation.

MR. HILTON: I think it's there, Your Honor

. THE COURT: It's there.

MR. HILTON: If you'll just touch that screen, it make it --

THE COURT: There you go.

A Along this corner here, we see the roadway. That actually is a yellow marker for a beer can in this area here. And down in here is the actual ditch that I was explaining. This part up here is the top of the opposite ditch and this is the ditch going down.

BY MR. HILTON:

Q And where was the body actually located in this picture?

A It would have been located right in this area, right here.

Q Now, the area that's depicted in this picture, where are we talking about?

A Clubhouse Road. It's about a mile, maybe three-quarters of a mile off of 17-A. Going down Clubhouse Road,

it would have been on the right-hand side of the road going towards Charleston.

Q Let me show you what's been marked for identification as State's Exhibit No. 4, and ask if you recognize this?

A Yes.

Q What is that a picture of?

A That's a picture of the victim, Michael Canady.

Q And is that an accurate photograph of the body as you came to the scene that day?

A Yes, sir.

Q Had the body been altered or messed up in any way at that point?

A No, it has not.

MR. HILTON: Your Honor, at this time we would offer State's Exhibit No. 4 into evidence.

THE COURT: Have you shown it to --

MR. CHISOLM: No objection, Your Honor.

MR. HILTON: He's seen it.

THE COURT: Very well.

THE COURT: State's Exhibit No. 4, in evidence without objection. It is a photograph.

(State's Exhibit No. 4, photograph, was marked and entered.)

BY MR. HILTON:

Q Can you just describe for the jury what we're seeing

here?

A That is the victim, and when he's laying down, this is actually -- that part right there -- I keep saying canal, but it's more like a ditch. Where the ditch would have been at an angle like this, he's actually laid against the angle of the ditch.

Q I don't know if you're able to look at this side by side --

A In here. Yes. Right -- that's where the back of him would have been laying, like, up against the ditch. He was on his side.

Q Let me show you what's been marked for identification as State's Exhibit No. 1, and ask if you'd take a look at that?

A Yes.

Q What is that a picture of?

A That is a picture -- we were photographing because his pants were pulled down below where most young men wear their pants below their bottom, and we were showing that these -- the pants were actually below where his undershorts were.

Q Was there ever any evidence of any rape or anything like that?

A No. There was none of that.

Q Is this an accurate photograph of, I guess, another portion of the body?

A Yes. Actually shows how his leg is coming up.

MR. HILTON: At this time, we'd offer State's Exhibit No. 1 in evidence.

THE COURT: Have you shown it to --

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. State's Exhibit No. 1 in evidence without objection.

BY MR. HILTON:

Q And that was the picture you were describing?

A Yes. And --

Q Oh, I'm sorry.

A -- I was just explaining that that shows the angle of the side of the canal, the way his leg is laying up on that.

Q When you go out to process a crime scene do you know what you're looking for?

A No, I do not.

Q Is it common to find things that end up having absolutely nothing to do with the case?

A Very common.

Q Do you always find the smoking gun?

A No, not always.

Q Now, after processing this scene, what did you do with the body?

A I assisted the coroner in collection of the body just because of the angle of the ditch in order to get him up and

out of the ditch. I just assisted in placing him in the bag.

Q Did y'all request an autopsy?

A Yes, we did.

Q Is that standard practice?

A At the time, he just had a small mark on his cheek, that we noticed he had some blood from, and other than that, he had no other trauma. I did check him for trauma. We found no other trauma to the body. So being of his age and the condition we found the body, we did request that.

Q Who is it that makes the ultimate examination and determination as the cause of death?

A The medical examiner.

Q Is that akin to a forensic pathologist?

A Yes.

Q Do you remember who you used in this case?

A Presnell, Dr. Presnell.

Q Now, were you involved with the identification of the body?

A Yes, I was.

Q And in what capacity was that?

A Det. Bistromowitz got information that it was a young -- it was possibly a young man by the name of Canady. At which point I searched through the FBI file and found that he had been arrested in Charleston County. We requested a

fingerprint card, a latent card, and I did a -- after having his fingerprints done, enrolled in the coroner's office, I did a one-to-one comparison and identified him.

Q All right. Let's fast forward a little bit to September 27, 2007. Do you remember on that day receiving the defendant's Dodge Durango to be processed?

A Yes, sir.

Q And was that pursuant to a search warrant?

A Yes, it was.

Q And where was the car brought at that time?

A It was brought to the Sheriff's Office in Summerville. We have a garage, a double bay garage for processing, and it was secured inside that garage.

Q Now, did you end up processing it on the 27th?

A No, sir. We processed it the next day.

Q Was it secured during that time?

A Yes. It was locked inside our garage.

Q And we've talked about processing an outside scene, but when you process a vehicle what procedure do you go through there?

A We pretty much do the same thing. We photograph the outside. We photograph all four sides, tag, vin, just so we have identifying marks that that is that vehicle. Then we will start with the driver's side opening the door and just photographing the inside with everything in tact, before

anything is searched or gone through. Then we meticulously move around, then the back passenger, the back, the back passenger, the front passenger, just to make sure that that's how the vehicle came in and that's the condition and everything within that vehicle.

Q Now, was there a particular area of this vehicle that you were focusing on?

A Yes, sir. The passenger side.

Q What made you focus there?

A We had gotten information -- I had gotten -- received information --

MR. CHISOLM: Objection. Hearsay, Your Honor.

MR. HILTON: Not for the truth of the matter asserted.

THE COURT: All right. And --

Ladies and gentlemen, I need to hear a word or two about what we are talking about. Let me ask this of you.

The purpose that you are asking this statement, the purpose that you are offering this statement is for what purpose?

MR. HILTON: Why they were focusing on the passenger side.

THE COURT: All right. I'm going to overrule the objection, but I am going to tell the jury that the next statement is offered only for the -- only for the reason of indicating why there was a focus on a particular part of the

car, and that is the only reason that this next statement is being offered. It's not being offered for the truth of the matter asserted, but only to explain why this witness undertook to look in a particular place.

You may proceed.

BY MR. HILTON:

Q Detective, I'll repeat the question. Why were y'all focused on the passenger side of the car?

A Det. Giglio was given information that the seat was exchanged out on the passenger side.

Q Now, did you limit your search of the rest of the car?

A No. We still searched the rest of the vehicle.

Q Okay. So I understand, it was the focus that was on the passenger area?

A It was the focus that was on the passenger side, yes, sir.

Q And as far as forensic processing for blood and fluids and that sort of thing, how do you go about doing that?

A We were using Otolidine at the time. It is a type of -- it reacts positive to protein in the blood, and it acts -- when you test it, you swab the area, you then put the Otolidine on there, after you hit it with some hydrogen peroxide it causes a chemical reaction and it will turn, like, a purple.

Q Now, ultimately, Det. Zensen, was there anything of any

DNA value found in the car?

A None of DNA value.

Q Now, let me ask you some questions. You've been doing this for a long time. You said down in Palm Beach, now with the Sheriff's Office here in Dorchester County. How accurate are those CSI shows and stuff that you see on TV?

MR. CHISOLM: Objection. Speculation, Your Honor. An improper question, Your Honor.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Foundation, Your Honor.

THE COURT: I'm going to allow -- but add a little foundation, did she ever watch the show, and then I'll allow that a little bit. Overruled.

BY MR. HILTON:

Q Det. Zensen, do you ever watch those shows like CSI Miami and I don't know all the other ones that are one, but the ones that talk about crime scene investigation?

A No. Actually, I work enough in it that I don't need to go home and watch it.

Q Have you ever seen those shows or talked about those shows?

MR. CHISOLM: Objection. Asked and answered, Your Honor.

THE COURT: Sustained. She said she didn't look at it. She's never seen it.

BY MR. HILTON:

Q Have you discussed the content of those shows with your co-employees?

A Yes.

MR. CHISOLM: Objection. Relevance, Your Honor.

THE COURT: Sustained.

BY MR. HILTON:

Q Det. Zensen, when you process the scene and you develop a sample of something, can you just go plug it into your computer and it go, beep, beep, beep, beep, and you get an answer what you're looking for?

A No. It doesn't work like that.

Q Do you have endless data bases where you can find almost any information that you look for?

A No. Usually, each state is on their own separate -- like for us for fingerprints we're on something called AFIS tracker, which means affixed to Dorchester County. As an example, for a latent card, I can run an latent in Dorchester County, then I would have to do a remote search for Charleston, a remote for Colleton, a remote for Orangeburg and Berkeley. If wanted to go statewide, then I'd have to go through SLED. They hit on all the counties together, but each agency kind of builds their own database within their own data.

Q Are you always able to find a key piece of evidence

when you process a vehicle or scene or anything?
A No, not always.
Q Now, with regard to other information in the car did you notice anything about the seatbelt?
A The seatbelt was missing and upon -- after photographing and further review, we noticed that it wasn't just missing from the actual -- where it hangs down, but the -- I guess half the roll bar that goes across where the seatbelt is connected into, that plastic was kind of pulled out, and upon pulling it out, we noticed that the seatbelt was cut all the way down to the actual retractor, itself.
Q Let me show you what's been introduced into evidence as State's Exhibit No. 9, and ask if that's what you're talking about?
A Yes.
MR. HILTON: I just want to verify. I believe that's in evidence.
THE COURT: Say again? You just want to verify that -- I'm getting a nod. Yes.
BY MR. HILTON:
Q Det. Zensen, is this what you're referring to?
A Yes. Right here is where we noticed the seatbelt is missing, and this is missing the plastic cover that covered through here in this area. It was pulled out a little bit on this side. This back here, that's just the inside of our

garage. The door was just opened.

Q As far as the plastic cover, you say it's missing. Was it missing because you took it off or what?

A It is not on there because we removed it. Yes.

Q And the mechanism at the bottom of that post, there. This mechanism here, what is that?

A That's the seatbelt retractor.

Q Were y'all able to remove that from the vehicle?

A We didn't have the tool to remove it, but we had someone from the road department who had mechanics tools come down and remove it.

Q And were you there for that process?

A Yes, I was.

Q Let me show you what's been marked as State's Exhibit No. 25, and ask if you recognize this item?

A Yes.

Q Is that the seatbelt you removed from the post of the defendant's Dodge Durango?

MR. CHISOLM: Objection. Foundation, Your Honor.

THE COURT: Overruled.

A Yes.

MR. HILTON: At this time, we'd offer State's Exhibit No. 25 into evidence.

THE COURT: Very well. Any objection?

MR. CHISOLM: Your Honor, she hasn't clearly identified

it, no special markings, no number. She hasn't made a proper foundation of why she's specifically recognized the item as the item that was -- that was recovered.

THE COURT: Very well. Overruled. In evidence as Exhibit?

MR. HILTON: State's 25.

THE COURT: Yes.

(State's Exhibit No. 25, seatbelt, was marked and entered.)

MR. HILTON: Let me put this picture back up, just for a moment.

BY MR. HILTON:

Q To get to that seatbelt mechanism did you have to remove that panel?

A Yes.

Q And that's referring to State's Exhibit No.9.

Now, Det. Zensen, were you able to process the original seat that was in that Dodge Durango?

A No, I was not.

Q Why was that?

A The original seat was not there.

Q Were you able to process that portion of the seatbelt that had been cut from the car?

A No.

Q Why was that?

A That -- the seatbelt portion had been removed. It was cut all the way down to the retractor.

Q And can you find any DNA items or any items of evidentiary value on items that you don't process?

A No.

Q And I guess it would be stuff you don't have any opportunity to process; is that correct?

A That's correct. If it's removed, it's unable to be processed.

Q Det. Zensen, let me show you what's been marked for identification and ask if you recognize those items?

A Yes.

Q What does that appear to be?

A That is where we noticed that the seatbelt was missing from, I guess, it would be the top guard to hold the seatbelt from going all the way back down.

Q Okay. Is that a picture you took during the processing of the vehicle that day?

A Yes.

Q Is that an accurate picture of the vehicle as it was?

A Yes.

MR. HILTON: Your Honor, we'd offer State's Exhibit No. 29, into evidence.

THE COURT: All right. Have you seen Exhibit 29, Mr. Chisolm?

MR. CHISOLM: Yes, Your Honor.

THE COURT: And is there any objection?

MR. CHISOLM: Yes, there is, Your Honor.

THE COURT: All right.

MR. CHISOLM: Your Honor, it's just cumulative. It's already been proven that the seatbelt is missing.

THE COURT: All right. Very well. Let me see the photograph.

(Photo pass to Court.)

MR. HILTON: I guess --

THE COURT: Yes?

MR. HILTON: -- in fairness, you need to look at State's Exhibit No. 9.

THE COURT: Okay.

MR. HILTON: That's the other photograph.

THE COURT: Very well. I'll allow it.

MR. HILTON: Thank you.

THE COURT: Yes.

BY MR. HILTON:

Q Det. Zensen, is this what we're talking about here?

A Yes.

Q And does that show the panel and so forth in place prior to you taking it off?

A Yes.

Q Now, did you remove the seatbelt out of there?

A No, I did not.
Q Let me show you what's been marked for identification as State's Exhibit 31, and ask if you recognize that?
A Yes.
Q What is that a photograph of?
A That's a photograph of the retractor that is actually placed in that support beam.
Q Is that a closer-up photograph than the one that we've used previously?
A Yes, it is.
MR. HILTON: Your Honor, at this time, I would offer State's Exhibit 31 into evidence.
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well. State's Exhibit No. 31, in evidence without objection. It is a photo.
(State's Exhibit No. 31, photo, was marked and entered.)
BY MR. HILTON:
Q And is that what we're talking about?
A Yes.
Q And what is that a picture of?
A This here is the actual retractor.
Q And is that the item in State's Exhibit No. 25?
A Yes, it is.
Q Let me show you what's been marked as State's Exhibit

No. 30 for identification and ask if you recognize that?

A Yes, I do.

Q And what is that a picture of?

A That is the inside of the driver's side of the Dodge Durango, the first picture.

Q Is that an accurate photograph of the vehicle as it was on September 28th?

A Yes, it is.

MR. HILTON: Your Honor, at this time, I'd offer State's Exhibit 30 into evidence.

THE COURT: Any objection?

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. State's Exhibit 30 in evidence without objection. It is a photograph.

(State's Exhibit No. 30, photo, was marked and entered.)

BY MR. HILTON:

Q Can you point out for the jury what that shows?

A Yes. This is the driver's side of the vehicle when we first started our search when we take the overall, and we start to photograph the inside, and that's the inside of the vehicle.

Q Do you see any damage to that driver's seat?

A No.

Q Let me show you, again, State's Exhibit No. 4, that I

believe is in evidence.

THE COURT: I believe it is, too.

BY MR. HILTON:

Q I'll ask you to take a look at that picture there. You said, earlier, that State's Exhibit No. 4 was a picture of the body at the scene as you found it?

A Yes.

Q And the stuff running down the back of his shirt, what does that appear to be?

A It appears to be blood.

Q In your experience as a crime scene tech, is this scene one that you would consider excessively bloody?

A No, it is not.

Q In that photograph, and it's hard to see on the display, and that's why I'm asking you to look at it, but in that photograph does the blood appear to be more faint than one would think blood might be?

A Yes.

Q And why is that?

A Due to humidity, during that time of year, it's very humid out and the dew. Dew is nothing but moisture that lays on the ground and sinks back in. So whenever you have dew laying on any object it's always going to roll over and find the lowest point. It's moisture. It's nothing more than water.

Q But does that cause blood to fade out --
A Yes.
Q -- from its red color?
A Yes.
MR. CHISOLM: Objection. He's leading the witness, Your Honor.
THE COURT: Sustained. Don't lead.
BY MR. HILTON:
Q What would the effect on the color of the blood be based on the dew and the water --
MR. CHISOLM: Objection. Foundation, Your Honor.
THE COURT: You may answer.
A I'd be like if you cut your finger on a light t-shirt and you take it off immediately and you rinse it under, you still have that browning or that very faint light look to it. It takes some scrubbing in order to get it out. That's the proteins and lipids and the fatty acids that's being deposited. And that is what it appears to look like.
BY MR. HILTON:
Q And in your experience as a crime scene tech, have you had the opportunity to deal like evidence transference and so forth?
A Yes.
Q And would that include, you know, if blood is on one item and touches something else would that include getting

on that other item?

A Yes. There would be a transfer.

Q Okay. And would the blood on the back of the defendant's shirt transfer to another item, if he was, say, sitting in a seat?

A Yes. It would be like putting a wet towel on a seat or putting a wet towel on a bed. Even if you placed it there for just a moment and lifted it up, there would be some form of wetness that would transfer just because of the water or the wetness.

Q Det. Zensen, let me show you what's been marked as State's Exhibit No. 28 for identification and ask you if you recognize this item?

A Yes. It's our cooler.

Q Is it just any cooler; what relevance does it have to this case?

A No. It's a Dorchester County cooler. We have several of these that we use for either recovering wet objects and/or if we were to have to transport any kind of biological specimens to be tested at the lab, but this one was used for transporting that handgun along with the water that was collected at the time, to SLED.

Q And is that the cooler that was used?

A Yes, that's the cooler.

Q And let me show you what's been marked for

identification as State's Exhibit No. 14, and ask if you recognize this item?

A Yes, I do.

Q Is that the gun that was in that cooler?

A Yes, it is.

Q How do you know?

A It's very distinctive in the green neon sight that it has on the top. Also, it's very distinctive in the gold trigger that it has.

Q Now, were you able to take possession of this gun right as it was pulled out of the water?

A Yes.

Q And as it was being pulled out of the water, what did the dive team do with it?

A They put the cooler underneath the water to kind of -- because in order -- as soon as the gun would come out it would start to oxidize and rust. So in order to keep it in its natural state you need to keep it in what it was in, in order to preserve it. So they would collect it in the water and that's the way it was collected. I then placed it into a large red bio-hazard bag just so it didn't spill in my truck, in order to transport it to SLED.

Q And did you take that gun to SLED?

A I took it directly from the site directly to SLED.

Q Do you remember who gave you the gun?

A Allison -- Det. Allison Greer had to. I had a broke foot and wasn't able to make it down the embankment.

Q And physically, what was the process of how all that took place?

A I stood on the actual bridge and gave her my camera for her to go down the embankment, just because I was not able to maneuver down there, so she could photograph it and it could be collected. I stood on the side so it could be brought directly to me, and it was placed in my vehicle and I took it directly there, to SLED.

Q Were you able to see and observe from the bridge, them removing the gun from the water?

A Yes, I was.

Q And were you able to see from the bridge, them place the gun in that cooler?

A Yes.

Q And is that the cooler and the gun that Det. Greer handed to you on the bridge that day?

A Yes. I gave her the actual cooler and my camera in order to go down to collect it.

Q And after collecting it she gave it back to you?

A Correct.

Q And is that the gun that you took up to SLED to be processed?

A Yes, it is.

Q And what are those little white ties on it?
A We secure it for courtroom, what we call courtroom ready just so it comes into evidence or comes into the courtroom so that it's unloaded, so that it can be verified that it's unloaded and it is a secure weapon.
Q Now, prior to court were those ties on it?
A No.
Q Okay. Who put those on there?
A I did.
Q Okay. Det. Zensen, is this the gun that was recovered from the river near Bacon's Bridge that day?
MR. CHISOLM: Objection. Asked and answered, Your Honor.
A Yes.
Q Thank you.
MR. HILTON: At this time -- I'm sorry.
THE COURT: I overruled the objection. You may proceed.
MR. HILTON: At this time we would offer State's Exhibit No. 14 into evidence.
THE COURT: Any objection?
MR. CHISOLM: I'll just renew my objection, Your Honor, on the same grounds.
THE COURT: Very well. Overruled.
MR. HILTON: Thank Your Honor. At this time we would offer State's Exhibit No. 28 into evidence.

THE COURT: It is -- oh, this is the cooler. The gun was 27?

MR. HILTON: 14.

THE COURT: I'm sorry. Say again?

MR. HILTON: The gun was 14.

THE COURT: No. 14. 14. I'm sorry. And the cooler is --

MR. HILTON: 28.

THE COURT: No. 28. Got it.

Any objection?

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. In evidence without objection.

(State's Exhibit No. 28, cooler, was marked and entered.)

BY MR. HILTON:

Q Det. Zensen --

THE COURT: This is probably a terrific --

MR. HILTON: One more minute, briefly.

THE COURT: Okay.

BY MR. HILTON:

Q Det. Zensen, I can't being this to you, but State's Exhibit No. 23, that I believe is in evidence.

MR. HILTON: Is that correct?

COURT REPORTER: Yes.

BY MR. HILTON:

Q What is this item?

A That is the passenger side seat that was removed from a Dodge Durango.

Q A Dodge Durango?

A No.

Q Whose Dodge Durango?

A A 2005, Mr. Chisolm's Dodge Durango.

Q And this seat cover, was that on the seat, as well?

A Yes, it was.

Q And let me show you State's Exhibit No. 7. State's Exhibit 7, that's in evidence, is this a picture of that seat with that cover?

A Yes, it is.

Q Please answer --

MR. HILTON: I think we're going to break. At this time I would tender the witness, Your Honor.

THE COURT: Very well. And ladies and gentlemen, that will conclude the work that we will do for today. You're going to be going home and you know the curiosity is going to be heightened. And just please be mindful not to discuss this matter or allow anyone to discuss it with you. Blame it on the judge. Don't you all take any upset. It would not be permissible, allowed, a violation of my order to discuss this matter or allow anyone to discuss it with you. Should anyone try to do that I hope you would get their name

time. I would ask that he be excused after his testimony.

THE COURT: Okay. Do y'all want to talk about that. Any concerns about that?

MR. CHISOLM: I have no concerns, Your Honor.

THE COURT: Okay. Very well. All right.

All right. Let us have our jury.

(Jury in at 2:27 p.m.)

THE COURT: Oh, don't we need Zensen.

There you go. Have your seat. You have already been sworn.

Very well. All right. Ladies and gentlemen, at this time we will continue with the state's case and the continued direct examination of Officer Zensen.

I didn't do that right. Officer Zensen?

MS. ZENSEN: Det. Zensen.

THE COURT: See. I knew that wasn't right.

Okay.

MR. HILTON: Actually, we were finished. This is cross examination.

THE COURT: You did conclude. All right. Very well.

Go ahead. Take your time.

(Mr. Chisolm confers with Mr. Loy.)

JAMIE ZENSEN - CROSS-EXAMINATION

BY MR. CHISOLM:

Q How are you, Detective?

A Fine. How are you?
Q Okay. All right. You testified yesterday you are a detective in the field of forensics, correct?
A Yes. Crime scene.
Q All right. Did you take a detailed account of definitive as well as potential crime scenes, correct?
A I do. Yes.
Q And you utilize various tools to record as accurately as possible the scenes as they were found; correct?
A I do.
Q You also collect a wide range of items in terms of potential evidence; correct?
A Yes, sir.
Q Okay. Would you say some of the various items range from large items like weapons to smaller ones like bullets or particles of blood undetectable to the human eye?
A Yes, I do.
Q Is the evidence then sent off for further processing if it's needed?
A It is. Depending on what our lab capabilities are.
Q Could you tell me what your lab capabilities are?
A We do not have a DNA lab within our facility. We do have latent or fingerprint capabilities.
Q So you all do not process the DNA -- you all do not compare the DNA to samples?

A No.
Q That's -- sorry, go ahead.
A We collect it. We do presumptive test for blood, and then when the presumptive test show positive then it is sent off to SLED for their DNA analysis.
Q And who will receive these results from SLED?
A It comes back through crime scene, at which point it is passed on to the detectives, solicitors, defense attorneys, defense.
Q When doing these presumptive swabs, what techniques would you usually use?
A We use two different types of techniques, actually we can use up to three. We use something called phenolphthalein test that test positive for protein. It actually turns dark blue. We use an toluidine test that also tests for protein that turns like a fuchsia to dark purple and there's also a hemoglobin which actually tests to tell human blood from any kind of animal blood, meaning that we have hemoglobin in our red blood cells.
Q So when you do these presumptive swabs you know definitively whether it's human blood, at that time, you know whether it's human blood or possibly animal blood; is that what you're saying?
A If the hemoglobin is used, yes.
Q Okay. How often is that test used?

A It varies. It's a very temperamental test. I has to be -- that test is usually done in a very controlled environment. Where the toluidine and phenolphthalein can be done out at the scene. It's not like light sensitive, it's not temperature sensitive, it doesn't have the same parameters as other tests have.

Q Can blood be easily washed away or easily cleaned from a surface?

A If it is a non-porous surface, yes, I can say you can wash it away. But if it is a porous surface it has a tendency to seep in and cling onto, as I used the example if you have a bloody nose and get it on your white t-shirt, you can rinse it out, you can use some soaps and detergents, depending on whether it breaks down that protein particle, it's not going to get that blood out. You will still see a small stain in it.

Q So what you're saying is if blood is on a white shirt or white t-shirt, it's not going to get out?

A It will get out if the detergent is used or some type of bleaching mechanism is used, but just to be rinsed out with standard water it would have to be soaked in water for a very long time in order for it to dissolve and come out and you would still be able to see it.

Q All right. Could you give us an example of -- a couple of examples of a porous surface?

A A porous surface would be paper, anything that you -- if you were to pour water on this it would absorb into and come through the other side. A non-porous would be a counter top where the water would just sit and not actually saturate or soak through.

Q How long can blood evidence potentially last on a surface before it becomes undetectable or -- before it become undetectable to where you all can't pull it off; is that possible?

A Blood can come off. I'm not a DNA expert, but from my understanding DNA stays around for quite some time even though the blood is removed.

Q And you said blood does transfer from surface to surface pretty easily?

A Just as water. Any form of liquid. That saturated towel, you touch it again and when it touch it again it is going to leak some form or water or moisture behind. Blood being moisture, if you pick it up from one spot and move it to another, even if you just touch it, swipe it, the idea of transfer is very high and great.

Q So me touch -- if I have blood on my hands and I touch that?

A That would be considered transference.

Q Okay. If blood was being pulled by gravity across a surface at a downward angle would it be able to make it from

Point A to Point B without leaving a definitive trail?

A I'm sorry?

Q If -- better example. If a person were bleeding from here --

A Uh-huh. (Affirmative response.)

Q -- and it was coming down to here, would there be a trail? Would you definitely be able to see a trail? Would it just coming straight down?

A There would be factors involved.

Q Okay.

A Such as coming from up here to there --

Q Yes.

A -- is there a gap. In other words, on a breast of a woman, it would come down and it would obviously have a void area before it made contact again. Liquid will -- any form of liquid, blood, water, that's part of civil engineering. Water will always find or seek the lowest point. What trail or path it will take, I can't determine.

Q So all in all, blood transfers easily, doesn't just wash away, and can almost certainly be detected by forensics; correct?

A No. I don't agree with that.

Q Okay.

A Blood. Okay, to answer your -- Say the first part again?

Q Blood transfers easily?

A It can. Yes.

Q Okay. It doesn't just wash away?

A It does with detergents and if you take the time to scrub and wash and use bleach, it can wash away. That's not what I'm saying. If I get blood on my shirt, and I don't rinse it out or I allow dew, as in Mr. Canady's case, dew settling each day that it comes and it pulls a little bit more and a little bit more. As long as he's not saturated with it or in any form of water or standing water, it is going to stay verses had he been in standing water, then the potential of it washing away is much greater than it now. Him, unfortunately, laying in the ditch, didn't have the opportunity to wash away.

Q So the condition -- would you say the condition that he was found in with the apparent blood stains that he had, those -- would those be an almost accurate depiction of the condition he was likely in at that time, or the likely pattern of the blood at that time?

A With his right shoulder --

Q Yes.

A -- being up on the -- with his right shoulder being in the upward position and his left shoulder being down, to have -- since the wound is on the left side, in order to get it to this side he would actually have to be sitting or in

an upward position in order for it to run down in order for it to saturate the back -- in order to move around to the front. If he was in the ditch at the time, being that the wound is on the left side, it would be nearly impossible for it to be on the right side because moisture doesn't flow up. It flows down.

Q Okay. What I'm mainly asking, what I'm trying to say --

A Yes, sir.

Q -- the blood pattern is that correct, where it's at. Like -- you're saying it won't go away, so the stain is there is a pretty accurate stain? No blood -- if -- where the stain is that's where blood was?

A Yes.

Q Okay. I'm going to need your help with a couple of visual aids, okay.

A That's okay.

Q Okay.

MR. CHISOLM: One second, Your Honor?

THE COURT: Sure.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Det. Zensen, I'm going to show you what's marked as State's Exhibit No. 4.

A Okay.

THE COURT: Mr. Hilton, is -- do you mind, and thank you.

BY MR. CHISOLM:

Q All right. Is that an accurate depiction -- can you tell me what this picture is?

A When I go out to a scene, like I said, we photograph all around the scene. This particular photo that was taken from the head facing back to where his feet were and how the body was discovered.

Q Could you -- do you see where -- could you tell me where the blood stain is -- or what -- let me be more specific. Can you describe the blood stain?

A Okay.

Q The coloration. Could you describe the difference between the blood stain and the victim's shirt?

A Yes. That would be in this area right here, down on his back -- there.

MR. CHISOLM: Mr. Loy, if you could -- turn it around. All right. Could you put your arms to the side. All right.

BY MR. CHISOLM:

Q Would you agree that from elbow to elbow on Mr. Loy, that would be about the mid-back?

A Yes.

Q Okay. Could you draw a line from the defendant's elbow to the beer can that's right next to him?

A (Witness complies.)
Q All right. Is there a stain in that area?
A I would have to see the next picture in order to find -- that's not a true -- it's a true depiction in the downward, but in order to give you the correct answer I would like to see the picture behind there, the next picture, so that I can see the back of the shirt more, to answer that question for you.
Q You can't see the back of the shirt from that picture?
A I can, but with the leaves and the disturbances there, I would like to see the next picture behind there in order to make that -- so say what you're asking.
Q All right. Would you also agree that from this area on Mr. Loy, on the arm --
A Yes.
Q -- the upper back area.
A Yes.
Q All right.
MR. CHISOLM: Can we have those lines erased, please.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q Would you agree that the blood stain is pretty much contained in the area depicted with that line?
A Actually, when I drew my line I had it coming down a little more like that.

Q In that general area. So -- would that be somewhat coming this way and then going to the downward angle to the left?

A No, sir. It would be -- to me, the way it was observed and the way it was taken, if you to come up from his top shoulder of his right side, on his outside sleeve. Bring your hand down --

Q Uh-huh. (Affirmative response.)

A -- start cutting across. That -- you're cutting too far across. From the shoulder up again. Okay.

Q If you could show me on this --

A Yes.

DET. ZENSEN: Is that okay, Your Honor?

(Det. Zensen leaves witness stand.)

THE COURT: There you go. A mannequin. A live mannequin. Ladies and gentlemen, can you all see. I've got to be sure you can see. I'll stand up. If you can't see just let me know, raise your hand. All right. And keep your voice up because you don't have a microphone.

A Okay. It starts at this corner sleeve, and it's coming down, like so. And it's right in through here. This is where

BY MR. CHISOLM:

Q Okay.

A This is where you were saying that his elbows were, but

as I'm saying it's coming up -- it's actually a wider range than what you were putting it at.

Q Okay.

A And coming across.

Q And it's coming clearly across the left side.

A The left side.

Q And nothing in this general area, the mid-lower back?

A Correct. However, you do have some bleeding --

Q Yes.

A -- going around this front.

Q Okay. In the shoulder area, all of this -- You can take that picture down.

A Okay.

Q This area has been stained?

A It's stained, yes.

Q Okay. But definitely there.

A Yes.

Q Okay.

MR. CHISOLM: Mr. Loy. Thank you.

One moment, Your Honor, confer with my notes.

THE COURT: Sure.

(Det. Zensen returns to witness stand.)

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Okay. I'd like to show you what's marked as State's

Exhibit No. 6.

A Okay.

Q Is that an accurate depiction -- could you tell me what that is?

A A 2005 Dodge Durango.

Q Is that an accurate depiction of the 2005 Dodge Durango that you all performed -- executed a search warrant on, on 9/28/2007?

A Yes, sir.

Q Okay.

MR. CHISOLM: Your Honor, I'd like to have this photo marked as -- I'd like to have this photo marked as an exhibit.

THE COURT: Is it -- it's not already in evidence?

MR. CHISOLM: No, Your Honor.

MR. HILTON: It is, Your Honor. It's actually in evidence as State's Exhibit No. 6.

MR. CHISOLM: This is a different --

MR. HILTON: Oh, I'm sorry. I thought he was referring to this picture here.

THE COURT: Show the photograph, please, to Mr. Hilton.

Any objection?

MR. HILTON: No objection.

THE COURT: All right. So it will be Defense Exhibit 10 in evidence --

COURT REPORTER: Six, Your Honor.

THE COURT: Six, in evidence without objection. It is a photo.

(Defendant's Exhibit No. 6, photo, was marked and entered.)

MR. CHISOLM: Thank you.

BY MR. CHISOLM:

Q Can you clearly see inside the car or do you need a picture of the car -- do you need it in your hand? I want you to be able to see the passenger seat is what I'm asking. I don't know if you can see it being on the screen like that or do I need to actually give you the picture?

A It's very -- it's very dark. It's dark outside, which is contributing to the darkness on the inside of the vehicle. I can make out the passenger seat along with the driver's seat. But can I look at it close or clearly, no.

Q Can you see it fairly all right?

A Yes.

Q Can you see where the seat cushion is?

A Yes.

MR. CHISOLM: Can you take that down, please.

BY MR. CHISOLM:

Q I'm going to show you again, State's Exhibit No. 6.

MR. CHISOLM: Can you please do a close up on that to where she can see the angle of the passenger seat, please.

BY MR. CHISOLM:

Q Does that accurately depict the vehicle in the condition that you all received it on 9/28/2007?

A Yes.

Q Okay. I'm going to adjust the seat close to that area there --

(Mr. Chisolm confers with Mr. Loy.)

A Yeah, that's it.

Q I'm going to move it over some, too.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Is that fairly accurate -- I'll adjust the seat cushion as you need me to. Tell me where you want it?

A It needs to come up and the head rest needs to come down.

Q Okay.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Could you give me the comparison, I believe you testified yesterday of a comparison of blood transfers like a wet towel, similar to a wet towel?

A Yes. A wet towel or saturated clothes, they have a tendency to -- well, they don't have a tendency to, they do transfer the same. If I took a wet t-shirt, a towel, anything that is porous that is saturated and set it down or

touched it or moved it against something it would leave a form of moisture, water, consistent with blood, whatever it was saturated with.

MR. CHISOLM: I'm just going to move this up for one second.

A Okay.

BY MR. CHISOLM:

Q Sorry. I'm going to move that up so you'll have a clearer understanding. If a saturated shirt that transfers easily came in contact with this area --

A Yes.

Q -- would that leave blood?

A Yes.

Q In your opinion, would this seat cushion be able to cover this area?

A Yes, and then you would have what is considered a void area where the seat cushion is absorbing the blood instead of the actual seat. The problem is with that seat was not in the vehicle at the time of the homicide.

Q Okay. Not saying -- you're saying the cushion would do what, now?

A It would leave a void area because the seat cushion would then take place of what is saturating the blood. It would be as if when water runs down a drain, if it hits any kind of bumps or curves or anything else, it's going to move

around that and take the easiest flow of travel for it. So when you take a wet towel you set on something you have two items laying there and you lay it on this one, when you lift this up, unless it is saturated through this one, it will have a void area that you would have the wet around it.

Q Okay. What I'm trying to ask -- if the seat cushion was not here, is what I'm asking. If the seat cushion was not here, and blood came into contract with this entire upward angle like this, this area would be covered in blood, correct?

A Yes, sir.

Q Okay. And if this general area was covered in blood, then this entire area would be covered in blood, correct?

A Yes.

Q Okay. Now, that's with the seat cushion not there?

A Correct.

Q Now, if someone went and purchased a seat cushion and it's in the position that it's in as the vehicle was brought to you, would this seat cushion be able to cover this area that it's not covered in, is what I'm asking you?

A Not covered. Can you say it one more time for me?

Q Okay. Is this seat cushion large enough to conceal this entire shoulder area?

A With the exception of, even in the photograph, the parameters of the seat cushion, it does conceal the majority

of the seat, yes.
Q This area. The top area.
A The top area. Yes. From the photograph and from that demonstration it is, in my opinion, it appears to be covering that top area, yes.
Q The whole space that I'm showing you, you're saying the seat cushion is covering it?
A According to the photograph, and according to that, there is a parameter that it is actually not covering.
Q Okay. This --
A The majority of the seat itself where the cushion is covering, it is covering.
Q Okay, and majority, this line, this would be visible?
A Yes.
Q This would be seen?
A Yes, just as it is in the photograph.
Q Okay. Now, if blood was in the shoulder area as you explained earlier, and the victim was shot in the head, yes?
A Yes.
Q What blood transfer, possibly transfer to any -- could you show me any areas that the blood could possibly transfer on the head rest?
A It would definitely to the side on the left side, and depending on the movement of the head while it was in -- I didn't draw a very good line. There would be more

predominately on the left side, but depending on the movement that was going on inside the vehicle, it could be some distance because there was such a small area between the head rest -- it could actually cover both side depending on the movement of the vehicle, if the vehicle is moving to the left, and if it is moving to the right, then the shifting of the body, therefore shifting of the blood shifting -- shifting of the liquid is going to definitely cover both sides. I can't say it would cover one side more than the other. But it would definitely predominate on that left side.

Q So this are would be covered in blood, and this exposed area would still have blood?

A Yes, sir.

Q And it wouldn't be concealed from anyone's view with just this seat cover?

A No, sir.

MR. CHISOLM: You can take that picture down, please.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q State's Exhibit No. 4.

MR. CHISOLM: Could you pass this, please.

MR. HILTON: Pass it to her?

MR. CHISOLM: Yes, pass it to her.

BY MR. CHISOLM:

Q I'd like to show you State's Exhibit No. 4. On this side of the victim is there apparent stains of blood?
A Are you talking about left side?
Q No, the left side?
A The right side, are you saying --
Q Not -- just the dowels --
A In the front?
Q Yes.
A There's no apparent -- it comes across the front shoulder area, the clavicle area, right through here. And into the back. Not down the front.
Q Okay. Thank you. Now, you testified earlier that you throughly examined my vehicle, correct?
A On the 28th?
Q Yes.
A Yes.
Q Okay. Both driver's side and passenger side, correct?
A Yes, sir.
Q Did you by chance examine the driver's side seatbelt?
A Yes.
Q Okay. Would you say blood can be transferred to and from the seatbelt pretty easily?
A Yes.
Q So any surface that the seatbelt would come into contact with, it would possibly transfer from that surface

-- it would possibly transfer to the next surface?
A Yes, sir.
Q Okay. When you examined my vehicle did you notice a seatbelt guide was still in place?
A Yes, I did.
Q Okay. And seatbelts go through seatbelt guides, correct?
A Yes, they do.
Q Rubbing against each other, yes?
A Yes.
Q Yesterday you testified performing a test for blood -- I'm sorry. You testified yesterday that you performed tests for blood on numerous areas in my vehicle that were swabbed, correct?
A Yes, they were swabbed.
Q Okay. Were 11 swabs taken from my vehicle?
A Yes, sir.
Q You said, yes?
A Yes, sir.
Q Were seven swabs taken from my center console area?
A I need my notes from that --
Q Your return notes, your SLED return notes?
A The return or the ones actually sent there.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:

Q Do you have a copy of your notes or would you like one to be provided for you?

A I've got a copy.

Q Okay. Seven swabs from the center console area, correct?

A Yes, sir.

Q Okay. Did you photograph -- did you all detail -- I'm sorry. When you all were doing -- conducting the execution of the search warrant on the vehicle, in detailing, in making sure you had an accurate recollection of the events that had taken place, did you all photograph everything that you all were doing?

A Yes.

Q Okay.

MR. CHISOLM: Your Honor, I'd like to mark this photo as an exhibit.

THE COURT: Have you shown it to Mr. Hilton?

MR. CHISOLM: Yes, Your Honor.

THE COURT: All right. Very well.

(Defendant's Exhibit No. 7, photo, was marked for ID only.)

BY MR. CHISOLM:

Q I'm going to show you Defense Exhibit No. 7.

A Okay.

Q Could you tell me what that is?

A That is the side of the center console of the Dodge Durango -- your Dodge Durango.

Q And could you tell me what the arrows represent?

A The arrows represent where with a magnifying glass we looked, we were looking at points of interest. Anything that appeared to be a dark speck or had blood like tendencies to it. That is where each swab was taken from each section.

Q Did you do the presumptive -- I believe it was the toluidine; is that right?

A Toluidine.

Q Did you do that test to determine if those seven swabs were blood?

A What we'll do is we'll do one or two to test to see if the points of interest are blood. Once we get a positive, if we get a positive and at that point we no longer continue with the Toluidine, we just do collection at that point in time for it to be sent to DNA for analysis.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, I move for Defense Exhibit No. 7 to go into evidence.

THE COURT: Any objection?

MR. HILTON: No objection.

THE COURT: Very well. Exhibit 7 in evidence without objection.

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT.

APPELLATE CASE NO. 2011-200186

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
140 N. Main Street, Suite 102
Summerville, SC 29483-6443
(843) 871-2640

Attorneys for Respondent

VOLUME TWO OF TWO
PAGES 501 - 692

INDEX

INDEX i

VOLUME ONE

PRE-TRIAL TRANSCRIPT (February 11, 2011) (Motion for Self-Representation) 1

PRE-TRIAL TRANSCRIPT (July 14, 2011) 40

PRE-TRIAL TRANSCRIPT (July 22, 2011) 72

MISTRIAL TRANSCRIPT (August 22-23, 2011) 86

TRIAL TRANSCRIPT (September 13-19, 2011) 132

DEFENSE MOTION TO SUPPRESS HEARING 133

TESTIMONY

MIKE GIGLIO
Direct Examination by Mr. Chisolm 142
Cross-Examination by Mr. Hilton 161
Redirect Examination by Mr. Chisolm 165

OPENING STATEMENT BY MR. HILTON 177

OPENING STATEMENT BY MR. CHISOLM 183

TESTIMONY

TONIA PLATT
Direct Examination by Mr. Austin 186

JOE BURNETTE
Direct Examination by Mr. Austin 189
Cross-Examination by Mr. Chisolm 191

JOSEPH BISTROMOWITZ
Direct Examination by Mr. Hilton 195
Cross-Examination by Mr. Chisolm 205
Continued Cross-Examination by Mr. Chisolm 216

Redirect Examination by Mr. Hilton 219
Re-cross Examination by Mr. Chsolm 221

TAMEKKA WILLIAMS
Direct Examination by Mr. Hilton 223
Cross-Examination by Mr. Chisolm 226
Continued Cross-Examination by Mr. Chisolm 235
Redirect Examination by Mr. Hilton 241
Re-cross Examination by Mr. Chisolm 243

SHAKARA ROSE
Direct Examination by Mr. Hilton 244
Cross-Examination by Mr. Chisolm 246

SHAQUANDA LASHAY WHITE
Direct Examination by Mr. Hilton 251
Cross-Examination by Mr. Chisolm 259

DAVID WHITE
Direct Examination by Mr. Hilton 267
Cross-Examination by Mr. Chisolm 302
Continued Cross-Examination by Mr. Chisolm 319
Continued Cross-Examination by Mr. Chisolm 323
Redirect Examination by Mr. Hilton 344
Re-cross Examination by Mr. Chisolm 350

PATRICE MCKNIGHT
Direct Examination by Mr. Hilton 353
Cross Examination by Mr. Chisolm 355
Redirect Examination by Mr. Hilton 356
Re-cross Examination by Mr. Chisolm 357

SUSAN JOHNSON
Direct Examination by Mr. Hilton 358
Cross Examination by Mr. Chisolm 363
Redirect Examination by Mr. Hilton 369

ERIN PRESNELL
Direct Examination by Mr. Hilton 370
Cross Examination by Mr. Chisolm 378
Redirect Examination by Mr. Hilton 380
Re-cross Examination by Mr. Chisolm 381

RICHARD JONES
Direct Examination by Mr. Hilton 391
Cross Examination by Mr. Chisolm 395

GEORGE GALLARDO
Direct Examination by Mr. Hilton 397
Cross Examination by Mr. Chisolm 405

THOMAS SIMONELLI
Direct Examination by Mr. Hilton 411
Cross Examination by Mr. Chisolm 414

CHRIS CARREIRO
Direct Examination by Mr. Hilton 416
Cross Examination by Mr. Chisolm 423

ALLISON GREER
Direct Examination by Mr. Hilton 425
Continued Direct Examination by Mr. Hilton 437
Cross Examination by Mr. Chisolm 441
Redirect Examination by Mr. Hilton 447
Re-cross Examination by Mr. Chisolm 448

JAMIE ZENSEN
Direct Examination by Mr. Hilton 450
Cross Examination by Mr. Chisolm 478

VOLUME TWO

JAMIE ZENSEN
Cross Examination by Mr. Chisolm 501
Continued Cross-Examination by Mr. Chisolm 529
Redirect Examination by Mr. Hilton 532
Re-cross Examination by Mr. Chisolm 534

MIKE GIGLIO
Direct Examination by Mr. Hilton 536
Cross Examination by Mr. Chisolm 567
Continued Cross Examination by Mr. Chisolm 593
Redirect Examination by Mr. Hilton 605
Re-cross Examination by Mr. Chisolm 607

IRA PARNELL
Direct Examination by Mr. Austin 608
Cross Examination by Mr. Chisolm 614

MOTION FOR A DIRECTED VERDICT 616

TESTIMONY

DONSURVI CHISOLM (In Camera) 617

EJUHAVNA CHISOLM
Direct Examination by Mr. Chisolm 619
Cross-Examination by Mr. Hilton 622

RENEWAL OF MOTION FOR DIRECTED VERDICT 628

STATE'S OPENING ON THE LAW 629

CLOSING ARGUMENT BY MR. CHISOLM 635

CLOSING ARGUMENT BY MR. HILTON 641

CHARGE ON THE LAW 666

VERDICT 686

SENTENCING 689

INDICTMENT 690

CERTIFICATE OF COUNSEL 692

(Defendant's Exhibit No. 7, photo, was marked and entered.)

BY MR. CHISOLM:

Q Did you also take one swab from my steering wheel?

A Yes, sir.

Q And you all took one swab from my seatbelt guide, correct?

A Yes, sir.

Q And all of these swabs came back as blood, correct?

A Like I explained. Once we get to a point where when we start to test an area we will take our first two swabs. If we have a positive for blood, we do not, at that point in time do not continue to do the presumptive test, because that can interfere with DNA especially with a very minute or a very tiny amount of blood, but the chemicals that are used in it, especially hydrogen peroxide, which has been known for taking blood out. It will diminish any form or DNA we have. So once we have a positive test on it. We no longer test at that point in time. We just take samples or swabs and send that to the lab for testing rather than continue to do the presumptive test on each swab.

COURT REPORTER: I'm sorry. On each what?

DET. ZENSEN: On each swab.

BY MR. CHISOLM:

Q And did all nine of these swabs get send to the SLED

office for comparison against the DNA of the victim, Craig Michael Canady?

A Yes.

Q Is it correct that most request and request returns are through you?

A Yes.

Q Did those results come back to you on January 18, 2008?

A Yes.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Is it a fact of that of all nine swabs sent in compared to Mr. Canady's DNA came back as a negative match?

A Nine of them -- seven of the came back with a negative match for his DNA. Actually, all nine came back with a negative match for Mr. Canady's DNA, however, two of them did come back, tested positive for blood, which meant that it was such a minute or such a tiny little sample that not enough DNA was there to be conclusive on the test on that, along with the two that tested positive for presumptive blood.

Q Did the report read, the partial DNA profile developed from Item 25 is from an unidentified male individual. Craig Canady, Jr., is excluded as a possible contributor to this item, and that's Item 25?

A Yes, sir.

Q Was Item 25 a swab from my seatbelt guide?
A Yes, sir.
Q Item 26.1 -- thank you. I'm sorry. Item 24, does the report read, the DNA obtained from Items -- hold on a second. I'm sorry. Okay. Items 15 through 21 are the seven swabs from the center console, correct?
A Yes, sir, that's correct.
Q Okay. And Item 24 is from the steering wheel, correct?
A Yes, sir, it is.
Q Okay. Does the report read, the DNA obtained from Items 15 through 21 and 24 are mixtures of at least two individuals, Craig Canady, Jr., is excluded as a contributor to these mixtures?
A Yes, it does.
Q Could you tell me were there any other requests for DNA comparison for Mr. Canady made in reference to this case?
A Other than the swabs and the -- we find the pacifier out at the scene that was tested. That was tested that came back as a positive match to Mr. Canady. We sent off the swabs and the cigarette butt and that came back as a negative match, also.
Q But nothing in my vehicle had Mr. Canady's DNA on it?
A No, sir, but the vehicle had also been altered.
Q The seatbelt guide was still in place, right?
A The seatbelt guide was in place, however, the seat belt

which is the main contributor that would have been holding the blood and the blood source is gone. A seatbelt guide is easily cleaned off just like a counter is. I can't say -- the crime scene that I received was obviously altered. The seat was gone, not only was the seatbelt cut, but the seatbelt was actually -- the sidewall removed and it cut all the way down to the extractor into the seatbelt retractor, which means I would not expect to find any form of -- with that much removal from the scene, I wouldn't find any DNA.

Q But you found DNA on the seatbelt guide and you testified earlier that blood is not easily removed.

A Yes, sir. You were in the vehicle. You had other people inside the vehicle. We only compared against Mr. Canady. I never completely compared against the general population. Anybody could have reached up and touched that. Sneezing will leave DNA. Brush your hair with the hair follicles coming out. Dandruff leaves DNA. Sloughing of the skin, every day taking clothes on and off, you're removing and taking clothes, which is contributing DNA left and right. We leave little trails of DNA everywhere. Being that you had the vehicle for as long as you did, we -- it would only be natural that there would be your DNA as the main contributor and his only would have been minute. We did find blood in the vehicle. I just cannot say that it is Mr. Canady's because the profile couldn't be developed.

There was four swabs that did test positive, two from us, two from SLED, just no DNA profile was able to be developed.

MR. CHISOLM: I'd like to mark the -- one second.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, I would like this marked as Defense Exhibit 8. I would like to introduce Defense Exhibit No. 8, please.

MR. HILTON: Let me just take a look at it.

No objection.

BY MR. CHISOLM:

Q Now --

THE COURT: All right. Defense Exhibit No. 8 in evidence without objection. How many pages are in that document?

MR. CHISOLM: Five, Your Honor.

THE COURT: All right. Five page document.

(Defendant's Exhibit No. 8, document, was marked and entered.)

BY MR. CHISOLM:

Q You said DNA is not easily removed -- I'm sorry, blood is not easily removed and we leave -- we can potentially leave a lot of DNA?

A Yes. We have the potential to do that. Yes.

Q Okay. So if blood is not easily removed and we potentially can leave a lot of DNA then someone else's DNA could be there as well as Mr. Canady's because as you

testified, blood is not easily removed. If blood touched that seatbelt guide it would still be there.

A Okay. On a porous substance blood is very -- blood can be very difficult to remove. Clothing, carpet. Even paper. Anything that is considered porous, blood, like ink is very hard to remove. However, on non-porous surfaces it's not. A counter top, plastic guide to a seatbelt guide. Anyone can take bleach, water, any kind of detergent that would break down any form of blood. Dawn is an awesome product. It can -- Windex. Anything can break that down. It is harder to remove from a porous than it is from a non-porous.

Q Then the DNA would have been removed as well, correct?

A Yes.

THE COURT: We're going to stop here for just a moment and take a comfort break.

Ladies and gentlemen please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. We'll take about 15. Of course, leave your note books in your seats.

(Jury out at 11:45 a.m.)

THE COURT: All right. We'll make the note from the juror. The reason I did it so quickly is I got a note from a juror that said, restroom. I took that to be some urgency. We'll mark that. Normally I try not to interrupt right in the middle of what somebody's doing, Mr. Chisolm,

but it seemed to be an urgency and I wanted the jurors to be able to listen to you instead of being occupied with other thoughts and concerns.

MR. CHISOLM: Thank you, Your Honor.

THE COURT: So of course don't talk about your testimony during the break.

We'll take about 15, everyone.

(Court's Exhibit No. 12, juror note, was marked.)

(Court in recess for morning break at 11:46 a.m.)

(Court in session after morning break at 12:10 p.m.)

(Defendant's Exhibit No. 9, photo, was marked for ID only.)

(Defendant's Exhibit No. 10, photo, was marked for ID only.)

(Defendant's Exhibit No. 11, photo, was marked for ID only.)

(Defendant's Exhibit No. 12, photo, was marked for ID only.)

(Defendant's Exhibit No. 13, photo, was marked for ID only.)

(Defendant's Exhibit No. 14, photo, was marked for ID only.)

(Defendant's Exhibit No. 15, photo, was marked for ID only.)

THE COURT: Thank you. Please be seated. Anything before we bring the jury out from the state?

MR. HILTON: Nothing from the state.

THE COURT: From the defense?

MR. CHISOLM: Nothing, Your Honor.

THE COURT: Let us have the jury, please.

COURT REPORTER: We pre-marked some defense exhibits.

THE COURT: Say what?

COURT REPORTER: We pre-marked for ID some defense exhibits, photographs, nine through 15.

THE COURT: You did?

COURT REPORTER: Yes, ma'am.

THE COURT: Brilliant.

COURT REPORTER: During the break.

THE COURT: Wonderful.

(Jury in at 12:11 p.m.)

THE COURT: All right. Ladies and gentlemen, at this time, we will continue with the cross-examination of Det. Zensen.

Mr. Chisolm.

MR. CHISOLM: Thank Your Honor.

THE COURT: Uh-huh. (Affirmative response.)

MR. CHISOLM: Your Honor, at this time I would like to move into evidence Defense Exhibits nine through 15 without objection.

MR. HILTON: That's correct.

THE COURT: Very well. They are photos?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Photographs nine through 16?

MR. CHISOLM: 15, Your Honor.

THE COURT: Nine through 15. In evidence without objection. They are photos.

(Defendant's Exhibit No. 9, photo, was marked and entered.)

(Defendant's Exhibit No. 10, photo, was marked and entered.)

(Defendant's Exhibit No. 11, photo, was marked and entered.)

(Defendant's Exhibit No. 12, photo, was marked and entered.)

(Defendant's Exhibit No. 13, photo, was marked and entered.)

(Defendant's Exhibit No. 14, photo, was marked and entered.)

(Defendant's Exhibit No. 15, photo, was marked and entered.)

JAMIE ZENSEN - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q I'm going to show you photos nine through 15.

A Okay.

Q Can you tell me what that is a picture of?
A That is a picture of the passenger side of the console, here. This is the passenger floor board where the seat had been removed by Dorchester County.
Q And in this photograph, does the vehicle appear to be very clean, the carpet?
A No.
Q Could you tell me what that is a photo of?
A Yes. That is the -- would be the seatbelt, I guess, harness portion of where the seatbelt would come through from here it would come out there in order to strap across.
Q I know on the screen, the glare is kind of hard, but does that area look very clean? Would you like to see the photo, close up?
A No. You're asking my interpretation. To me, I don't feel it's clean. To some people it would be.
Q Is that another view of the vehicle, of the passenger side of the vehicle?
A Yes, sir.
Q And once again, the area does not look highly clean, correct?
A Once again, it doesn't appear to be clean to me, no.
MR. HILTON: Your Honor, those photos, the first one is Defendant's Exhibit No. 9. The second one is Defendant's Exhibit 10. The one that he is currently referring to is

Defendant's Exhibit No. 11. This is Exhibit 12 --

THE COURT: All right.

BY MR. CHISOLM:

Q Could you tell me what that is a photo of?

A That appears to be the -- maybe a door frame of the vehicle itself, the step up guard to go to get in the -- the step into the Dodge Durango.

MR. CHISOLM: Can you show the next photo please.

MR. HILTON: Defendant's Exhibit No. 13.

MR. CHISOLM: Go to the next one.

MR. HILTON: Defendant's Exhibit No. 14?

BY MR. CHISOLM:

Q Could you tell me what that appears to be?

A That is the arm rest of the passenger side door.

MR. HILTON: Defendant's Exhibit No. 15.

BY MR. CHISOLM:

Q And could you tell me what that appears to be?

A That would be the arm rest of the passenger side where the lock mechanism is.

Q And no swabs of DNA were pulled from any of those areas, is that correct?

A No, sir.

Q Would you say you have processed quite a few scenes with wounded individuals?

A Yes, I have.

Q And you've collected blood from these scenes, correct?
A Yes.
Q Would you say that in a small enclosed area, such as a car, with numerous surfaces in every direction the potential for evidence transfer is great?
A It would depend on the scene, itself. Unfortunately, it was a small caliber, small discharge, very minimal, very small amounts.
Q Is it likely a person who is bleeding heavily can move or be moved without blood, without transferring blood to another surface?
A Anything is possible. I'm not going to say something is impossible.
Q If someone touched a wounded person with a large amount of blood on them would it transfer to their hands?
A Are their hands covered? Once again, it's possible. If their hands are covered or if they've got gloves on, then I would say no. If they do not, then, yes, obviously, it would transfer.
Q And if this person with blood on their hands in turn touched numerous surfaces would that blood then transfer to the surfaces touched?
A Human skin is very funny. We're back into that although we're porous we're actually non-porous. We touch water all the time but yet we absorb it to a certain degree.

We don't absorb it like a towel, clothing, or anything else. So if a blood hand was to touch something the next time it touched it would obviously leave a hand impression, but as you go on it's obviously going to leave less and less because that's where the non-porous section of us as humans comes from. Although we absorb the majority of it as we move on or the more items we touch the less blood we will leave behind.

Q So if the alleged -- so if it were alleged that the person touched door handles inside and out, a gun, a steering wheel, an arm rest, a cell phone, and maybe more surfaces the pattern -- I'm sorry, the quantity of blood left on those surfaces would diminish but it will continually leave a trail?

A Not forever. It would diminish and eventually it would be gone, and it would depend on how much blood was actually touched or absorbed by the hand, itself. In other words, if it was just a very minute amount it obviously a small amount is less left behind. The larger the amount the more is going to be left behind.

Q Now, if a person with blood on them, with the wound on the front side of their body, was moved or pulled, would there be a potential chance for blood to drip or transfer to any surface it may come into contract with in its forward path, if it's pulled forward?

A (No response.)
Q Do you --
A I don't understand. I'm sorry. You lost me for a second.
Q If a wounded person who is bleeding heavily is pulled forward would there be potential for blood to drip or transfer to any surface it would come in contract with when moved forward?
A I would say, yes.
Q Did you all send a carpet sample of my car to SLED?
A No.
MR. CHISOLM: One second.
THE COURT: All right.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q Det. Zensen, do you have a copy of your notes?
A Yes.
Q Do you have a copy of -- a three page report?
A Yes.
Q On the fifth line down, does it say carpet sample sent to SLED?
A Okay. I mis-understood the question. We did not do a carpet cutting, however, the sample that we sent was like a little clip of an area at the top that we had in question, but carpet sample would mean the actual cutting and removal

of the bottom and the padding underneath it. In my type of report I did put carpet sample when I should have put carpet cutting.

Q I asked earlier were there any other items pertaining to this case -- were there any other items under this case number sent there for testing in comparison of the DNA of Mr. Canady?

A Are you asking me if you asked that question?

Q I'm sorry. I'm asking the question again, I believe.

A I'm sorry. I'm sorry. I mis-understood the question you were asking me.

Q It might have been me. I apologize. Did any other items -- were there any other items marked under this case number that were sent in for comparison against the DNA of Craig Michael Canady?

A Yes. There were several items that were sent in. We went over the swabs, including the swabs from the steering wheel, the presumptive swabs. However, we did not go over swabs from the pacifier, swabs from the handle of the baby pacifier, swabs from the mouth portion of the baby's pacifier, cigarette butts on the ground found near the body. Hair removed from clothing, blood stained earth from Mr. Canady and fingernail clippings from left hand of Mr. Canady along with fingernail clippings from the right. Known hair from Mr. Canady.

Q Do you recall anything else being sent there?
A No.
Q On January 7, 2008, was a request sent in for 25 automatic handgun to be compared against the DNA of Craig Michael Canady?
A Yes. That --
MR. HILTON: Objection, Your Honor. Relevance.
MR. CHISOLM: Items that were compared against the DNA of Craig Michael Canady under this case law, Your Honor. Under the case number, Your Honor.
THE COURT: I'll allow it on cross-examination as long as it has to do with this matter.
A Okay. If the question is for DNA, that handgun was not sent in for Craig Canady, Michael Craig Canady's DNA. It was actually sent in for test firing to see -- to be compared for that. As far as the DNA it was not sent in for DNA purposes, no.
BY MR. CHISOLM:
Q It was not sent in to compare his DNA against the handgun?
A No. It was located in water, sir.
Q No. I'm sorry. Not the 22 automatic that is the alleged murder weapon.
A Okay.
Q On January 7, 2008, after the arrest of me and my co-

defendant a 25 automatic handgun found on another person was sent in --

MR. HILTON: Objection, Your Honor. Relevance.

THE COURT: Just a second.

MR. CHISOLM: Yes, Your Honor.

THE COURT: Ladies and gentlemen, there is a matter that I must take up outside of your presence. Please do not discuss this matter or allow anyone to discuss it with you.

(Jury out at 12:26 p.m.)

THE COURT: All right. The nature of the objection is?

MR. HILTON: Relevance. This gun was taken off of some other individual at some other time. Has no connection to the crime whatsoever.

THE COURT: I got it.

MR. HILTON: Unless I'm missing something.

THE COURT: I presumed that's what it was.

All right. Let me ask you this question. What evidence or what issue, I should say, what fact which has any consequence to this action would this evidence make more probable or less probable?

MR. CHISOLM: I didn't hear the question, Your Honor. I apologize.

THE COURT: Okay. You have asked about whether or not this witness was involved in any DNA testing with regards to another weapon found in another incident on another person

many months later.

MR. CHISOLM: Uh-huh. (Affirmative response.)

THE COURT: And my question to you is this; why does her response to this question have any tendency to make a fact which is of consequences to this action more probable or less probable. In other words, tell me what you're trying to show and why?

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor. Oh, I'm sorry.

THE COURT: Yes, go ahead.

MR. CHISOLM: Please the Court?

THE COURT: Uh-huh. (Affirmative response.)

MR. CHISOLM: Your Honor, I asked the question if a weapon was sent for DNA comparison without objection. There was no objection. And the answer was no, Your Honor. And I'm holding the South Carolina Law Enforcement Division Report -- that -- I'd like to mark the report as a Court's Exhibit so I can demonstrate that the test was done like I said. And since the question was not answered correctly I would, at least, like to straighten out the mis-statement and the false representation, Your Honor.

THE COURT: Let me see the report.

(Document passed to the Court.)

(Pause.)

THE COURT: All right. It -- as I understand your line

of questioning up to this point, you have been questioning this witness with regards to the -- to the vehicle and to the items that were obtained in that September/October time frame. And this involves a -- I gather, a gun that was taken from someone sometime later. Over a year later, it appears. And so I'm certainly not going to let you impeach her with this, because of the fairness part of it. If you think that you're impeaching her by her discussion of the alleged murder weapon in this case, and the fact that she said they didn't do the DNA analysis on this gun, that it was sent for ballistics because it was under water, and you're now going to impeach her on a test done on a gun over a year later. I'm going to disallow that just on basic fairness grounds. Just given the way that the testimony has proceeded.

Now, if you intend to ask her at some later time on another weapon was there DNA analysis that was performed, we'll talk about that and we'll talk about the relevance just to that, but just a sense of fairness your -- all of your questioning, all of the solicitor's questioning has related to the items taken close to the time of these alleged events.

So tell me -- I don't know what you're doing. Tell me what you're doing?

MR. CHISOLM: In actuality, Your Honor, the line of

questioning I was recently on I was asking what -- after we got through with the truck, Your Honor, I was asking what further items were tested in comparison against his DNA. The detective started to list pacifier, cigarette butts, things on the scene.

THE COURT: Right.

MR. CHISOLM: That I asked in connection with this case under this case number, were there any other items compared to Craig Michael Canady's DNA. She said no. That's when I attempted to introduce this in, as in there was another item that was introduced.

THE COURT: And what is this case number?

MR. HILTON: Is he going by the SLED lab number, I guess?

THE COURT: I don't know.

MR. HILTON: The SLED lab number is L0714150.

COURT REPORTER: I'm sorry?

MR. HILTON: I'm sorry, Bonnie. L0714150.

Sheriff's Office case number, I think, is 07008989.

MR. CHISOLM: I apologize, Your Honor. I'm going under the SLED number of items tested on this case, under the SLED number, because all other items in this case are under the same number, L07-14150. Everything SLED tested in connection with this case is under that same number.

THE COURT: I don't know that, because it's referred to

in the report that I'm looking at, that number is called the related case. Now, to -- what I would perceive that to be is that -- it answers -- is this evidence related to another lab number. To another lab number. This -- this -- what are y'all showing me?

MR. CHISOLM: Your Honor, it's the lab number that the weapon submitted into evidence was tested under.

THE COURT: Okay. The SLED number for the alleged murder weapon is L0714150. This gun, the -- if you will, the silver gun, with the white handle is case number L08-00290. So I'm not going to let -- this jury has got do a search for the truth. This is absolutely not impeachment. If you want to ask her directly was there another gun at some later time that there was DNA testing done with regards to the alleged victim, we'll talk about that, but this is not impeachment.

It's a different, first of all, it's a different case number. It's done over a year later. I don't know -- I don't know the context out of which that came. It's obviously taken from somebody. I don't know what the circumstances are surrounding that. That may be a whole different case. See what I'm saying.

MR. CHISOLM: Your Honor --

THE COURT: You're not going to use it for impeachment. So if you wish to ask her that question then we'll talk

about the relevance, but it's not impeachment. It's not fair to lay this as impeachment.

MR. CHISOLM: I wish to ask the question, Your Honor. If it's two months after my arrest. Two months after my arrest and they're still investigating the case. That's -- that's --

THE COURT: I thought yours -- I thought we were talking about September of '07. This is February of '08. So it's not a year. September, October, November, December, January, February. It's five months later.

MR. HILTON: I don't know the relevance, and if he can articulate some reason of why this gun is relevant. I don't see that.

THE COURT: It's not fair impeachment.

MR. CHISOLM: It's --

THE COURT: Tell me what other relevance?

MR. CHISOLM: I would like --

THE COURT: Because if -- let me be more articulate. If your position is that you have asked her were there any other DNA test done under this SLED case number, which is where you started, this gun was not tested. The silver gun, was not tested under the SLED number that you are referring to. It was tested under a different SLED number. So based on your argument it isn't impeachment.

MR. CHISOLM: I understand, Your Honor.

THE COURT: Okay.

MR. CHISOLM: Can I have one moment to confer.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, I'm -- I believe when I originally asked the question I asked under Craig Canady's DNA, what items were tested against his DNA. Then her answer -- I can't recall her answer, but then I believe I may have said under the case number. The grounds I'm trying to get it in under, Your Honor, with the original question of -- under what other items were tested against the DNA of Craig Michael Canady. The response was none. I'm sorry, were there other items tested against Craig Michael Canady's DNA. The response was none. I attempted to introduce that to prove that another item was still tested against his DNA. The item happened to be a weapon, but it was tested against his DNA, Your Honor. I believe it's very relevant. I was under arrest. My co-defendant -- I retract that statement, Your Honor.

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: All right. I am not going to allow. I'll say this again, I'm not going to allow questions about this other weapon to be used as impeachment of this witness. And the reason is this; if we assume that your question is what other items were tested for DNA. The course of your

interrogation up to that point had been items that this witness had removed from your car and had been involved in -- in this investigation. And there's no question in my mind, but that was the focus of your questions. I do not believe that it is fair impeachment for you to now ask her about a DNA comparison that occurred some five, six months later that I don't know the context of why that was done, was it in this case, was it in another case. I don't know that this witness has any involvement or what her involvement would be. It's under a different case number at SLED. I don't know if it's under the same case number or a different case number at the Sheriff's Department. In my mind it is not fair impeachment. So I'm not going to allow you to ask her that question to show that she's being untruthful with this jury, because I don't think it's fair impeachment.

However, however, if you can show me, if you can explain to me why it is relevant in this case, I will certainly allow you, unless there's another objection, I will allow you to ask that question. I'm just not going to allow it for the purpose of impeaching this witness. It's not fair impeachment. However, if there is some relevance to these matter that this testing of this gun has, I don't want to keep you from telling me that. I want you to tell me that. But it isn't fair impeachment in my mind, but if

it has some relevance to these issues other than impeachment, please let me know.

MR. CHISOLM: My co-defendant's daughter, Shaquanda White, who took the stand, who's testified already.

THE COURT: Yes.

MR. CHISOLM: Her boyfriend at the time was named Siquan Moody (sp). That's who --

COURT REPORTER: Who?

MR. CHISOLM: Siquan Moody. The person that Tamekka Williams got on the stand and said that Red was with the last time she saw him on Thursday, and after he left Siquan, Red came with me. I told detectives after Red left me he went back to Azalea Park. Azalea Park is where Siquan Moody stays at. The person that they recovered that gun from is Pierre Moody, that's Siquan Moody's younger brother. They're testing DNA from Craig Michael Canady against Pierre Moody's gun and they're all in the Haven Oaks -- I'm sorry -- they're all in the Azalea Park area, and this is after, like I said, Your Honor, we're already under arrest. But they're still investigating that Red went to Azalea Park and Siquan Moody and Pierre Moody, and they're testing his DNA exactly two to three months after David White said this happened, I did this, after David White gave them a weapon that has never been proven to be the murder weapon. If all that was true, why are they still investigating Siquan

Moody's little brother against Craig Michael Canady's DNA on his gun. A 25 automatic, which is a similar caliber to a 22 automatic. Because the projectile that was recovered, it doesn't say exactly if it's a 22 or a 25 projectile. It could vary. I have the SLED reports on the projectile, as well, Your Honor.

THE COURT: Let me see those.

(Documents pass to the Court.)

THE COURT: Thank you.

(Pause.)

MR. HILTON: Your Honor, is that the November 27th report of Ira Parnell?

THE COURT: This is November 27, 2007. Nope. This is Nicky Perry. Submitted by Jamie Zensen and received by Nicky Perry. Not -- it's not a report -- well, wait a minute, now -- let's see. November 27, 2007, signed -- the one that I have is signed by Nicky Perry. Received by Nicky Perry, submitted by Jamie Zensen. That's what it says.

MR. HILTON: May I see what you're looking at?

THE COURT: Of course.

MR. HILTON: I'm not --

THE COURT: He should have shown it to you first. Here, let me give that to you before I look at it.

(Mr. Chisolm confers with Mr. Loy.)

(Documents passed to Mr. Hilton.)

MR. HILTON: I think we're dealing with the second page is not the second page of the first one. It should be signed by Ira Parnell.

MR. CHISOLM: Okay.

(Documents passed to the Court.)

THE COURT: Thank you.

(Pause.)

THE COURT: Where are those other two sheets that I had on that other gun? I don't think I still have those up here. I think I returned those. No, I don't.

MR. CHISOLM: There's a ballistics report, as well, that weapon, Your Honor.

(Documents passed to Court.)

THE COURT: Great.

(Pause.)

THE COURT: Well, now tell me how you think the DNA testing of the gun in February is connected to this investigation?

MR. CHISOLM: Your Honor, they're alleging that the victim got shot in the head, that the gun got put to his head. They were testing another weapon to see if his DNA is on that weapon. They're testing that weapon, clearly, to see if Craig Michael Canady's DNA is on that weapon.

THE COURT: Well, according to the SLED report, the weapon that's tested in the report in February of '08, that

gun apparently is a 27 semi-automatic pistol which could not fire the bullet that was removed from the body of this alleged victim.

MR. CHISOLM: That's Item 27.

THE COURT: Yeah.

MR. CHISOLM: That's what you're reading that's saying that that gun is not the murder weapon, Your Honor.

THE COURT: That's not what that's saying.

MR. CHISOLM: Well, it's saying --

THE COURT: That's not what that's saying. That clearly isn't what that's saying, and if that's what you're saying, you really need to go over that with Mr. Loy, because I'm concerned that that is your interpretation of this report.

MR. CHISOLM: It's not conclusively saying that that is the murder weapon, Your Honor.

THE COURT: That makes me much more comfortable. Thank you.

There just isn't any connection between the two. I'm sorry. I'm not going to let you cross-examine this witness, certainly, about it, and if you and Mr. Loy can come up with some way to make it relevant, I certainly want to hear from you, because the bullet that was removed from the alleged victim in this case, according to that report -- have you got more reports, you've got expert testimony, I certainly would suggest that you show it to me. But one thing that

couldn't happened is that it couldn't have been fired from that second weapon. So if I'm not going to allow it for purposes of impeachment I -- I don't know what the relevance is. I don't know what the relevance is.

All right. Anything further.

MR. HILTON: Nothing from the state.

THE COURT: Anything further?

MR. CHISOLM: Nothing further, Your Honor.

THE COURT: Okay. Let me have the jury back, please. I know it's 1:00 o'clock, but if we can conclude this witness, I'd like to be able to get that done. So would she.

(Jury in at 12:58 p.m.)

THE COURT: All right. You may continue Mr. Chisolm with your cross-examination

MR. CHISOLM: One moment to confer, please, Your Honor.

THE COURT: Okay.

(Mr. Chisolm confers with Mr. Loy.)

JAMIE ZENSEN - CONTINUED CROSS-EXAMINATION

BY MR. CHISOLM:

Q Have you in your profession ever dealt with the collection of guns and ammunition at a crime scene?

A Yes, I have.

Q Would you say you have a vast amount of experience, a vast amount of experience dealing with the detection -- I'm sorry -- dealing with the collection of guns and ammunition

or spent projectiles?

A (No response.)

Q Collection?

A Collection, yes.

Q Okay. Could you tell me some of the reasons you're send a gun and a spent projectile together for processing?

A In Dorchester County, we have a policy, any gun that comes into -- that we acquire, it doesn't matter what reason we have it, from something as simple as a traffic stop all the way up to a homicide. We sent that to what we call IBIS, the Integrated Ballistics Identification System. We do it for CDV, if a lady was to -- we had a young lady, her husband passed away and she didn't want a firearm in her residence. It also goes, even though it's being turned over or recovered by Dorchester County. They all go and get put into this Integrated Ballistics Identification System. There's not a set standard for a gun that's going to be entered into that.

Q Can a gun or a projectile or bullet be tested to determine if a projectile was fired from a specific gun?

A I'm not a firearms expert, but from my understanding --

MR. HILTON: Objection, Your Honor, outside the scope of expertise.

THE COURT: Sustained.

BY MR. CHISOLM:

Q You said you helped with the recovery, correct?
A Yes.
Q Could you tell me if it was one or two people who moved the body when you all --
MR. HILTON: Objection.
THE COURT: Let me hear the question again?
MR. CHISOLM: Could you tell me if it was one or two people who moved the body?
THE COURT: At what point?
MR. CHISOLM: To remove him from the scene, Your Honor.
MR. HILTON: I mean, maybe he could just rephrase it.
THE COURT: Okay.
MR. CHISOLM: One second, Your Honor.
THE COURT: Okay.
(Mr. Chisolm confers with Mr. Loy.)
BY MR. CHISOLM:
Q You were there when the body was removed, correct?
A Yes, I was.
Q Could you tell me how the body was removed from the ditch to the coroner's wagon?
A In order for us to do that, we place the victim inside a body bag. Zipped up. Being that it was such a slope we had to life him up, obviously, over that and then placed him on the gurney and placed him in the coroner's van, at that point.

Q Was that a team lift effort?
A (No response.)
Q Team lift. Two people?
A I can't give you exactly how many people. It was a steep embankment that we had to get him up. I would assume it would have been more than myself and the coroner. I don't remember exactly how many people helped lift him from that steep embankment up onto the embankment and then placed him on the gurney.
Q But there was more than one person?
A Obviously, it was more than one person. Yes.
Q Were there any apparent drag -- you processed the entire scene, correct?
A Yes.
Q Were there any apparent drag marks on the ground from the street to where the body was found?
A Not to my recollection. No.
MR. CHISOLM: I have no further questions.
THE COURT: All right. Redirect?
MR. HILTON: Very briefly, Your Honor.
THE COURT: Okay.

JAMIE ZENSEN - REDIRECT EXAMINATION

BY MR. HILTON:
Q Det. Zensen, you talked with the defendant a good bit about evidence transfer. Wouldn't transfer, I guess it

assumes either drippage or contact, is that your understanding of it?

A Yes.

Q And so would it be the case if a bloody shirt wasn't in contact with the seat because of a body being slumped or positioned a certain way that there would be no transfer?

A That's correct.

Q Now, changing the subject just a little bit. Mr. Chisolm talked about some of the items on the SLED report that's been introduced as Defendant's Exhibit No. 8. I think it was a couple swabs that you could excluded the victim, Craig Michael Canady as a contributor. What about Items 26.1 and 26.2; can the victim be excluded from those items?

A No, he could not.

Q And what were those items?

A Those were swabs from the center console that had blood indicated on them.

Q And then, finally, Mr. Chisolm talked about drag marks and so forth. About how many days was it between -- well, let me just rephrase a little bit and ask, had the body been there for some time?

A Yes, he had been there.

Q And as far as moving the body up the ditch and out of the bank, is it easier going uphill or downhill?

A It's easier to go downhill.

THE COURT: Recross?

MR. CHISOLM: I believe so, Your Honor.

JAMIE ZENSEN - RE-CROSS EXAMINATION

BY MR. CHISOLM:

Q Does the report say the partial DNA profile developed for 26.2 was insufficient for reliable interpretation?

A That is correct.

Q No DNA profile was developed for Item 26.1?

A That is correct. It tested positive for blood, but no DNA because of the small amount that was collected.

MR. CHISOLM: Thank you.

THE COURT: All right. Is this witness free to leave?

MR. HILTON: She is, Your Honor.

THE COURT: Any objection.

MR. CHISOLM: No objection, Your Honor.

THE COURT: Very well. You are free to go.

Ladies and gentlemen, we have now reached our lunch hour, and I'm going to ask you, do you think you could be back by 2:15, that give you a little over an hour?

Very well. Excellent.

Ladies and gentlemen, we will reconvene at 2:15. Do not discuss this matter or allow anyone to discuss this matter with you. Don't read anything or listen to anything about this matter. No blogging, etcetera. No social media

regarding this matter. I'll look forward to seeing you at 2:15. Have a good lunch.

(Jury out at 1:08 p.m.)

THE COURT: All right. Anything from the state before we take our recess for lunch?

MR. HILTON: Nothing, Your Honor.

THE COURT: And from the defense?

MR. CHISOLM: I have nothing, Your Honor.

THE COURT: All right. I'll see you all about 10 minutes after 2:00.

(Court in recess for lunch at 1:09 p.m.)

(Court in session after lunch at 2:26 p.m.)

THE COURT: All right. Anything from the state before we begin?

MR. HILTON: Nothing from the state, Your Honor.

THE COURT: Mr. Chisolm?

MR. CHISOLM: Nothing, Your Honor.

THE COURT: All right. Very well. Let us have the jury.

(Jury in at 2:27 p.m.)

THE COURT: All right. Ladies and gentlemen, we will continue with the state's case.

Please call your next witness.

MR. HILTON: Thank Your Honor. State would call Det. Mike Giglio.

THE COURT: All right. Come along, please, and be sworn.

THE CLERK: Please raise your right hand. State your full name for the record.

MR. GIGLIO. First name is Michael. Middle initial is J, for John. Last name is Giglio.

(WHEREUPON, Mike Giglio was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness.

MR. HILTON: Thank Your Honor.

THE COURT: Uh-huh. (Affirmative response.)

MIKE GIGLIO - DIRECT EXAMINATION

BY MR. HILTON:

Q Det. Giglio, where are you employed?

A Dorchester County Sheriff's Office.

Q And how long have you been working there?

A About nine and a-half years.

Q All right. And back in September of 2007, what position did you hold in the Sheriff's Office?

A I was assigned to the detective division. I'm also a general investigator.

Q Okay. What position do you hold now?

A I'm currently a patrol sergeant. I work the night shift.

Q Was that a promotion?

A Yes, sir. I left investigation, transferred back to

road for a promotion.

Q Were you assigned as one of the lead investigators investigating the death of Mr. Michael Craig -- Craig Michael Canady?

A Yes, sir. Myself and Det. Walsh.

Q And what does lead investigator mean?

A Basically, it's kind of like a checks and balance kind of thing when we have two investigators. Like I said, Det. Walsh and myself were both lead investigators on this case. We were the two investigators assigned this case by Capt. Marshall.

As a lead investigator we would, basically, as tasks or information arose assign it to other investigators. Basically, we wanted to resolve this case in a timely fashion, therefore, as wealth of knowledge, information, facts, evidence, things like progress throughout the case, we can't be everywhere at once, so we'd ask other investigators to assist us in that regard.

As a lead investigator we conduct interviews, we speak with different people, gather as much information as we can about the case.

Q All right. And with regard to this case, just kind of give us a brief overview of how the case progress up until the time Mr. Chisolm was arrested?

A Yes, sir.

This was a rather lengthy investigation where we exhausted a lot of leads. This case initially began on September 15th for the Sheriff's Office, September 15, 2007, the victims body was found in the Clubhouse community in Dorchester County. That would have been a Saturday.

The on-call detectives at that time was Det. Greer and Det. Bistromowitz. I believe you heard from them earlier in testimony. Detectives Greer and Bistromowitz responded out on September 15th. At that time, the victim's body was later identified through the CVS card and some other interviews conducted by initial investigators.

Once, again, the victim, Craig Michael Canady was identified his body went for an autopsy. At the autopsy it was determine that the cause or the manner of his death was the result of a homicide, gunshot wound to the heard from a small caliber. I believe it was a 22.

At that time, that was September 16, Sunday, Capt. Marshall, who was the head of the detective division contacted Det. Walsh and myself along with -- probably the entire detective division at that point to come to the Sheriff's Office and begin investigating this case. Det. Walsh and I had worked homicide cases together in the past, so he paired us up and therefore we became the lead detectives.

Q What was one of the first things that y'all started to

do after you identified the body, as far as location of the victim?

A Well, like I said, the key piece of evidence is who is the victim. That's how every homicide investigation begins with. We know that at that time the victim was Craig Michael Canady. Well, who was he. We needed to find out more information about Mr. Canady. Where was he from, who did he live with. Who were the last people with him. That's basically a starting point for us.

Q Were y'all able to find that out?

A Yes, sir, we were.

Q And who were the two people who were the last people with the victim?

MR. CHISOLM: Objection, hearsay, Your Honor.

A Okay. During the course of the investigation --

THE COURT: Slow down. There's an objection.

MR. HILTON: The testimony's been heard as to really how they progressed in their investigation.

THE COURT: Rephrase your question.

BY MR. HILTON:

Q Did you learn who the last two folks were with the victim?

A Yes, sir. The last two --

MR. CHISOLM: Objection.

BY MR. HILTON:

Q Let me stop you right there.

Now, were you able to talk with -- were you able to focus your investigation then on the folks that were last involved with the victim?

A Yes, sir. As I was explaining. We started doing a time line, known in advance, what could we verify, what information did we have. And based on known verifiable facts, information that we could proceed from; credible witnesses, people in the community, people who knew Mr. Canady, people who came forward and approached law enforcement. That's how we basically -- it's a puzzle. We built a time line. What do we know and from there it kind of filled the pieces in.

Q How many people would you say you interviewed over the course of your investigation?

A Probably 100 people or more.

Q Now, specifically, with David White and Donsurvi Chisolm did you -- were you able to find out that they were the last people with the victim?

A Yes, sir.

Q And after you found out that information what did you do next in your investigation as far as starting to corroborate some of that?

A Basically, we needed to build that time line. I keep referring to this time line throughout my testimony,

probably, but this whole case is based upon known and verifiable facts that we can articulate.

Mr. Chisolm and Mr. White were the last two people known to be with the victim when he was alive. We had no other verifiable reported sightings of them. We had no other information that the victim had been here or there or contracted this person after September 13th.

Q Did you subpoena some phone records for the victim at that time?

A Yes, sir. During a normal course of investigation of a homicide and in this day and age everybody carries a cell phone. Land lines are getting to be few and far between. It's common practice that we subpoena phone records.

We know the victims phone number. We obtained that information through his girlfriend, Ms. Tamekka Williams, also other parties came forward and said, hey, Mr. Canady or people called him Red, his cell phone number was such and such. It was [redacted]. So one of the first phone records we were going to get through an investigation at that time was Mr. Canady's. We also subpoenaed Mr. Chisolm's phone records, as well as other phone records.

I believe Det. Greer, who was one of the other investigators assisting, that was one of her tasks, she obtained a lot of the search warrants and contacted the phone carriers, and daily we were getting phone records

coming in, bombarded with paper work regarding this case.

Q Were you able to get any phone records for David White?

A Yes, sir. Mr. David White didn't actually have a cell phone that belonged to him, but he told us through interviews that he had a cell phone that belonged to a friend of his named Jay Williams that he would use when Jay was at his home in Evergreen. So we did subpoena those phone records. That phone number was [redacted].

COURT REPORTER: Sorry?

A [redacted].

BY MR. HILTON:

Q Now, going back to David White and Donsurvi Chisolm as being the last two individuals that were with the victim, were y'all able to start checking on some of the stories that they were giving at that time?

A Yes, sir. Initially, this investigation kind of got sidelined. Mr. Chisolm initially approached officers and provided some information and initially it was believed that he was trying to be a helpful, you know, participant in this investigation. In fact, it seemed like this investigation kept getting mislead in a lot of different directions. Through phone records which Mr. Chisolm suggested to officers, we knew some of his information was incredible. We also verified through sightings, through other third parties, Mr. Siquan Moody, Shaquanda White that the victim

was alive, was with Donsurvi Chisolm and David White in Evergreen on September 13th, about 4:00 a.m.

Q Were you able to learn from the defendant's phone records anything about the seat on his vehicle?

A Yes, sir.

Q And how -- what could you learn about a seat from phone records?

A That the defendant's phone records, Mr. Chisolm's phone records, upon exploring them or looking through them, like I said, initially, our initial point of focus was the time of death. The day of death, the time of death, around September 13, early morning hours. Once we verified and got information basically between Mr. Chisolm's testimonies or reports to law enforcement officers, between sightings from other people we kind of locked in on where he was and who he was with at that time.

When we began to explorer his phone records a little bit further, days beyond the death --

MR. CHISOLM: Your Honor, that's a matter of law.

THE COURT: Okay. Ladies and gentlemen, will you please step to your jury room. Do not discuss this matter with anyone. Do not allow anyone to discuss it with you.

(Jury out at 2:38 p.m.)

THE COURT: All right. What is your matter of law?

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: My phone records were conditionally introduced and he said he would lay the foundation and that hasn't been laid yet, and he's publishing the phone records, Your Honor. They have not been introduced. Well, they were conditionally introduced in to evidence. They've never connected the dots so he should be able to publish them.

MR. HILTON: Can I just briefly respond, Your Honor.

MR. CHISOLM: Sure.

MR. HILTON: Det. Bistromowitz testified, I think he was maybe the third witness in the case. He testified that they were on Tamekka Williams apartment on September 15, 2007, that was the day the body was discovered. It was at that point that Mr. Chisolm came up to them and he ended up volunteering his phone number of [redacted], maybe -- that might be the number. I'm just going from memory, but he volunteered his phone number. As a matter of fact, subsequent to that we had Ms. Sue Johnson from T-Mobile, the company that took over the defendant's phone records, and we introduced records for telephone number -- I'm sorry, it was [redacted], and those records were introduced at that time. At that time, the motion was made that they be conditionally relevant --

THE COURT: Conditionally admitted.

MR. HILTON: Conditionally admitted by the defendant. When he made that objection I wasn't quite sure he was

talking about the phone number. That phone number had been established by the time Sue Johnson testified and otherwise. So I think the fact that his phone number was given by him to police and a statement, the fact that we had the telephone person come down and authenticate records for the phone number that he gave police. I think that they are authenticated and that we can talk about it at this point in time in the trial.

THE COURT: Additionally, to that, on cross-examination, Mr. Chisolm refers to it as, my number.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Thank you, Your Honor.

THE COURT: All right. May I have my jury back.

It's no longer conditionally in evidence. They would be in evidence.

(State's Exhibit No. 17, phone records, was marked and entered.)

COURT REPORTER: State's 17.

THE COURT: Thank you.

(Jury in at 2:41 p.m.)

THE COURT: Okay, you may continue.

MR. HILTON: Thank Your Honor.

MIKE GIGLIO - CONTINUED DIRECT EXAMINATION

BY MR. HILTON:

Q Det. Giglio, just let me repeat the question again.

Were you able to find out anything through the defendant's telephone records anything about the seat in this vehicle?

A Through the utilization of his phone records, and like I said, exploring them, we noticed on September 14, which would have been the Friday, the day after the victim's death, he called, I'd say junkyards, but one was a Dodge Dealer, one was a salvage yard, LKQ Auto Parts. Basically in a matter of several minutes he went from different -- calling different business all related to vehicle related services, which kind of peeked my interest a little bit.

Q Okay. We're going to come back to that in a few moments. But now what about the victim's phone; were y'all ever able to actually locate the actual victim's phone?

A No, sir, we were not.

Q But you did get his records, correct?

A Yes, sir, that's correct.

Q And what telephone number did he have?

A The victim, Mr. Craig Michael Canady, he had a cellular phone [redacted].

Q And who is Tabitha Polite?

A Tabitha Polite was a female acquaintance of him. The phone was actually registered to her.

Q So these telephone records that say Tabitha Polite, which are marked as State's Exhibit 16, is that, in fact, the victim's phone records?

A Yes, sir.
Q After finding out about the junkyards were you able to go to some of those junkyards and verify whether the defendant had been there or not?
A Yes, sir. Initially --
MR. CHISOLM: Objection, Your Honor. Calls for hearsay.
MR. HILTON: I'll come back to that, Your Honor.
THE COURT: Very well.
BY MR. HILTON:
Q Did you ever go out to LKQ Automotive?
A Yes, I did.
Q Is that one of the junkyards the defendant was calling on his phone records?
A Yes, sir. That's one of the numbers that showed up on Mr. Chisolm's phone records.
Q I'll show you what's marked as State's Exhibit No. 21. Is that where you went?
A Yes, sir. I took that photograph.
Q Did you meet with Richard Johns or George Gallardo there?
A Yes, sir, I did.
Q Okay. Were you able to inspect the junk car at LKQ automotive?
A Yes, sir. It was a Dodge Durango, I believe it was a dark color with gray interior.

Q Was it missing a seat?
A Yes, sir, it's missing the passenger side seat?
Q Were you able to get like a VIN number or a serial number off of that car?
A Yes, sir. Basically, well, we photographed and documented that car. We inspected the driver's side seat and obtained the serial numbers. All the numbers listed on the bottom. Some of them were electrical component numbers, some numbers were specific to the trim code of the vehicle. Some were specific to the seat itself for that vehicle.
Q At some point in time were you able to find the passenger seat that was taken out of that Dodge Durango at the junkyard?
A Yes, sir, we sure did.
Q Where was that located?
A Inside the 2005 Dodge Durango operated by Mr. Chisolm.
Q Were you able to match up serial numbers?
A Yes, sir.
Q And when you say the 2005 Dodge Durango, let me show you State's Exhibit No. 6 and just ask you if that's what you're referring to?
A Yes, sir.
Q And is that the defendant's car?
A It's the defendant's vehicle.
Q At some point in time did y'all find a weapon that was

involved in this case?
A Yes, sir.
Q When was that?
A That was the latter part of November. I believe it was November 19th, when Mr. Chisolm's co-defendant came forward and voluntarily provided information that verified and corroborated information that we had on this case.
Q And after Mr. White came forward were you able to find the gun?
A Yes, sir, the murder weapon, what we believe to be the murder weapon, described by Mr. David White, was recovered from the Ashley River.
Q Is that State's Exhibit No. 14?
A Yes, sir, it is.
Q Did y'all tell him where that gun was?
A No, sir.
Q Did you even know where the gun was at the time?
A No, sir, I did not.
Q Now, also after David White came forward, I think that's when you learned the location of the murder scene, id that correct?
A Yes, sir.
Q And where is that?
A That was in the Azalea Park community of Orangeburg Road in Dorchester County, roughly two blocks from Highway

17-A and Orangeburg Road, right behind the BiLo area.

Q Did you all go out to that scene?

A Yes, we did.

Q And I'll show you what's been entered into evidence as State's Exhibit No. 13 and just ask is this the area we're talking about, marked as Azalea Park?

A Can I step down or you bring it to me?

Q I'll bring it to you.

A My eyes aren't --

Q Is that area labeled as Azalea Park?

A Yes, sir.

Q Did y'all go out to that scene?

A Yes, sir, we did.

Q Did you look around on the ground or anything for any evidence?

A Yes, sir.

Q We canvassed Azalea Park, Haven Oaks, quite frequently. Once we discovered the actual murder location was Azalea Park we returned to that area, walked around to see if there was any potential evidence. Now, granted this was now November that this information came to us that this was the exact incident location, when we returned. We know the time of death was September 13th.

Q Detective, at some point in time in one of Mr. Chisolm's statements, did y'all learn that according to him

the victim had jumped a little canal, a ditch-way from Haven Oaks to Azalea Park?

A Yes, sir. And actually to elaborate a little bit further on that, I believe it was October 19th when Mr. Chisolm flagged down Det. Greer and Det. Walsh, who was my partner in this case, and actually pointed out the location where the victim allegedly crossed over when he dropped him off.

Q Let me show you what's been marked as State's No. 11, for identification and ask if you recognize that?

A Yes, sir. That is the ditch between Azalea Park and Haven Oaks.

Q Is that an accurate picture of that area?

A Yes, sir.

Q Is that an area that Mr. Chisolm was talking about?

A Yes, sir.

MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit No. 11 into evidence.

THE COURT: Did you show it to Mr. Chisolm?

MR. CHISOLM: I have no objection.

THE COURT: Very well. In evidence without objection.

(State's Exhibit No. 11, photo, was marked and entered.)

(State's Exhibit No. 32, photo, was marked for ID only.)

BY MR. HILTON:

Q Let me show you what's been marked as State's Exhibit No. 32 for identification and ask if you recognize this?

A Yes, sir. That' the same ditch area between Azalea Park and Haven Oaks.

Q Is that picture a little closer picture of it?

A Yes, sir.

MR. HILTON: Your Honor, at this time, I'd offer State's Exhibit No. 32 into evidence.

THE COURT: Have you shown it to --

MR. HILTON: I did.

MR. CHISOLM: I have no objection.

THE COURT: Very well. State's 32 entered without objection.

(State's Exhibit No. 32, photo, was marked and entered.)

BY MR. HILTON:

Q Det. Giglio, does this area stay pretty muddy?

A It changes with the weather. I can't say that it's muddy nor do I live in the community to say that it's muddy all the time. It's soft ground. It's not a concrete surface.

Q During the course of your investigation were you able to determine the weather conditions around the time of September 13, 2007?

A Yes, sir. And in the normal course of things that we do during a homicide investigation is at least when Det. Walsh and I work cases together, we pull the week's weather chart, go to weather dot come. Go to an on-line site and get the week's trend in weather, that way we have a weather forecast and then what we did was later on when we went back to explore the Haven Oaks Azalea Park ditch that Mr. Chisolm reported the victim crossed, we picked a week when the weather was similar in trend, you know, if it rained three days before, we waited until the weather was consistent when we returned out there.

Q Let me show you what's been marked for identification as State's Exhibit No. 10. Just ask if you recognize this?

A Yes, sir. I sure do. That's my muddy shoe.

MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit No. 10, into evidence.

THE COURT: Have you showed it to Mr. Chisolm?

MR. HILTON: I did.

THE COURT: All right.

Any objection?

MR. CHISOLM: No objection, Your Honor.

THE COURT: All right. No objection, into evidence.

BY MR. HILTON:

Q This is the picture taken during similar conditions to September 13th?

A Yes, sir. What we did is Det. Walsh and myself, Det Walsh actually took the photograph and I'm actually wearing those shoes right now. Not muddy, of course, but we returned out to the Haven Oaks community and attempted to walk across and navigate through the ditch the same area that Mr. Chisolm pointed out the victim crossed.

Q At some point in time around September 27, 2007, did you -- excuse me, were you involved in a seizure and execution of a search warrant on a 2005 Dodge Durango belonging to the defendant?

A Yes, sir. On September 27, 2007, I obtained an arrest warrant from the Chief Magistrate in Dorchester County, at that time. It was Mr. Glen Stephens. The magistrate signed a search warrant for the vehicle. At which time I contacted Det. Natalie, who is one of our narcotics officers who was in an unmarked vehicle able to conduct surveillance. Det. Natalie was notified prior to me going to meet with the judge, and let him know, hey, we may be obtaining a search warrant on his vehicle, so he began surveillance. Once the search warrant was obtained and signed I notified the detective and said, we have a signed search warrant we need to conduct a stop on this vehicle. We're going to seize this vehicle as evidence.

Q Is that what happened?

A Yes, sir.

Q All right. Did you arrive on scene once the vehicle was stopped?

A Yes, sir, I did.

Q Okay. Did you have the search warrant with you?

A Yes, sir, I did.

Q And when you're executing a search warrant do you read the search warrant to the defendant?

A Yes, sir, I do.

Q Do you read their Miranda rights to them?

A Yes, sir. At that time, on September 27th, I got out with Mr. Chisolm. He was actually detained by the Summerville Police Officer, at that point, placed in a patrol car. Based on him being detained, I felt it was appropriate that Mr. Chisolm be advised of his Miranda rights. So upon my first meeting with him I advised him of his Miranda rights.

Q And Miranda rights, that's the right to remain silent and so forth?

A Yes, sir.

Q Okay. Did you read him that search warrant?

A Yes, sir. I sure did. Actually, I recall a conversation where he basically said you don't have to, but it's common practice, if I'm going to execute a warrant I'm going to read it to the person. So I read him the entire length of the warrant.

Q At some point in time, did he stop you while you were reading it?

A Yes, sir, he did.

Q When was that?

A Towards the end of the warrant, there's a paragraph that details how Mr. Chisolm came into possession of a new passenger side seat. At which time he kind of interrupted and said, wait, what was that part. He seemed --

Q Did --

A -- I'm sorry. To me it seemed like he was alarmed or surprised that we obtained that information.

MR. CHISOLM: Objection, Your Honor. Conclusion.

THE COURT: He can talk about what he saw, but he cannot interpret. He can talk about what he saw.

BY MR. HILTON:

Q Did he give you any explanation at that time why he had changed out his seat?

A No, sir. And I even asked him at that time, if he'd like to come to the office and speak with me, but he declined.

Q Now, during the course of your investigation would y'all ever go out to the Haven Oaks community?

A Yes, sir. Quite frequently.

Q I mean, that's where the defendant lived, right?

A Yes, sir, but that's where the defendant lived, that's

where the victim lived.

Q Okay. Did some of your witnesses live out there?

A Yes, sir.

Q And after talking with those witnesses did the defendant do anything unusual?

A Yes, sir.

Q What was that?

A Well, local law enforcement can't sneak into the Haven Oaks community unnoticed. A Crown Victoria is a pretty common patrol car, so when a Crown Victoria comes into the Haven Oaks area it -- it's not -- I'm not surprised to see people move or scurry away. When we'd come into the Haven Oaks community we'd often see Mr. Chisolm there. And we'd go knock on a door to follow up with a witnesses or basically bang on doors to try to get information. Who knew Mr. Canady, anybody could tell us anything that happened to his man. We'd often observe Mr. Canady -- I'm sorry, Mr. Chisolm standing in the common areas kind of observing what we were doing.

Q Would he ever go talk to the people afterwards?

A Yes, sir. I can recall on one occasion --

MR. CHISOLM: Objection. Leading, Your Honor.

THE COURT: Don't lead.

BY MR. HILTON:

Q What would he do after y'all finished talking to a

witness?

A I can't cite a specific instance when we met with a young lady by the name of Jennifer Stallings during the course of the investigation. Det. Walsh and myself went to see Ms. Stallings to gather information regarding this case. As soon as we left her doorstep and began walking down the sidewalk, Mr. Chisolm began walking in our direction and marched to the door that we'd just left.

Q I told you we would come back to some phone records and I want to do that now. During your investigation and during the trial, and you've been sitting here during the whole trial.

A Yes.

Q Have we learned the cell tower locations that were the subject in this case?

A Yes, sir, we did.

Q And that was from the defendant's record?

A Yes, sir.

Q Okay. And those towers, I think it was Ms. Sue Johnson gave us were 400 Orangeburg Road, 516 Beach Hill Road, 1049 Beach Hill Road, and 132 Trolley Alley or Trolley Avenue. Are you familiar with Dorchester County?

A Yes, sir.

Q I'm going to give you what's been marked as State's Exhibit No. 12, and entered into evidence, and ask if you

can plot those addresses on this map, again, the locations of those towers? Do you need a pen?

A Yes, sir.

Q If you can just mark and label those and then we'll go through them.

A You want me to put a dot and then a key -- or how do you want me to write it down?

Q Just put a little X and the tower location.

A Okay.

(Witness complies.)

Q Finished?

A Yes, sir.

Q I'm going to hold this up and if you'll just tell the jury what you've done here.

A This is Highway 61, also known as Beach Hill Road. This is Bacon's Bridge Road, and this is Dorchester, just as a reference. So if you're going to take Dorchester Road heading down towards 61, this way would take you to Charleston, this way would take you back towards the Legend Oaks community. And then -- the first point here is 516 Beach Hill Road. That's roughly about where the 516 tower was. This next point here is 1049 Beach Hill Road. That's where another cell tower is located. Once again, back here is the Haven Oaks Azalea Park community. Short distance from that on Orangeburg Road, heading back towards Bacon's

Bridge Dorchester Road corridor, White House Crossroads. The DSS building, you may be familiar with that, it's 400 Orangeburg Road. And then this last one is 132 Trolley Alley.

MR. CHISOLM: Your Honor, could the witness speak --

DET. GIGLIO: Mr. Chisolm, do you need me to repeat or --

THE COURT: Just speak louder.

DET. GIGLIO: Okay.

MR. CHISOLM: I apologize, Your Honor.

A This last point here is 132 Trolley Alley. It's off of Old Trolley Road in the area of -- across from the Briarwood Subdivision. I believe Time Warner Cable used to be there one point in time. There's a couple automotive body shops back here. That's where the Trolley Alley is.

(State's Exhibit No. 33, phone records, was marked for ID only.)

BY MR. HILTON:

Q Det. Giglio, have you had an opportunity to go through during the course of your investigation and examine the phone records of the defendant and the victim?

A Yes, sir.

Q Let me show you what's been marked for identification as State's Exhibit No. 33, and just ask if you had an opportunity to review that?

A Yes, sir, I have.
Q Is that an accurate compilation, if you will, of the phone records between Mr. Chisolm and the victim?
A Yes, sir, it is.
Q And is this just a little bit easier to read than the phone records?
A Yes. Quite so.
MR. HILTON: Your Honor, at this time, we'd offer State's Exhibit No. 33 into evidence.
THE COURT: All right. Any objection?
MR. CHISOLM: No objection, Your Honor.
THE COURT: Very well.
(State's Exhibit No. 33, phone records, was marked and entered.)
BY MR. HILTON:
Q Let me hand you State's Exhibit No. 33, and we'll go through some of these calls. Specifically, on September 13, around 4:13, is there a call located at that time or was there a call placed at that time?
A Yes, sir. On September 13, 2007, the victim's phone, the [redacted] that Mr. Canady used a call was placed to a Siquan Moody. That call, in duration, lasted 34 seconds.
Q What was the activity of Mr. Chisolm's phone immediately preceding that call and then immediately after that call?

A On September 13th at 3:51 a.m., Mr. Donsurvi Chisolm's telephone number contacted his wife's telephone number and the call lasted 2 minutes and 10 seconds.

Q And what cell tower did that hit off of?

A 516 Beach Hill Road.

Q And then we have the 4:13 call, and then what's the next call?

A There's a -- between 3:51 and 4:41 there's no activity on Mr. Chisolm's phone, and then at 4:41 Mr. Chisolm's phone places a call to once again his wife, Natalia Chisolm, and that call lasted one minute, 13 seconds in duration and strikes off the 1049 Beach Hill Road tower.

Q And what time does he get back in the area of the Trolley Alley in the 516 Beach Hill Road where it appears that he's coming back towards the 400 Orangeburg Road area?

A (No response.)

Q Let me clarify a little bit.

A Yes, sir.

Q When was the next call that was made that pinged off of the 400 Orangeburg Road tower after the ones that we've just referred to?

A Mr. Chisolm's phone strikes off the 400 Orangeburg Road tower at 6:19 a.m., and that call lasts five seconds.

Q And immediately, as far as his records go, what was the call prior to that?

A Mr. Chisolm's?

Q That's correct.

A Prior to that 4:54 a.m., Mr. Chisolm's phone placed a call to a gentleman by the name of John Charles. That call lasted 3 seconds.

Q And what tower did it hit off of?

A The 132 Trolley Alley.

Q And so were there any calls on Mr. Chisolm's phone from 4:54 to 6:19?

A No, sir, there's no activity where he's placed any phone calls.

Q And getting into the daylight hours of September 13, 2007, around 7:56. Where did he call then?

A At 7:56 a.m., Mr. Chisolm's phone contacted a telephone number in Florida, his telephone was striking off of 400 Orangeburg Road tower and that call lasted one minute and 19 seconds.

Q Were there any other calls to Florida on this chart?

A Yes, sir. Another call was placed at 9:13 a.m. Once again, he was at the 400 Orangeburg Road tower, and that call lasted one minute, 26 seconds.

Q And then finally at 12:44 who did he call?

A Mr. Chisolm's telephone contacted the Army recruiter in Summerville and once again the 400 Orangeburg Road tower.

Q Det. Giglio, looking again at State's Exhibit No. 12,

where was the body dumped in the ditch on that map?

A The body of Mr. Craig Canady was discarded on Clubhouse Road about one miles from Highway 17-A, at just about the same spot where Mr. David White has already marked and initialed.

Q Did y'all escort Mr. David White out there?

A No, sir.

Q Det. Giglio, with regard to that number about how many statements, how many interactions did Mr. Chisolm have with police?

A If you'll give me a minute to refer to my notes. I believe five actual face-to-face interactions between law enforcement and him and then I know there was some telephone contract where he contacted Det. Walsh on September 23rd.

Q And was he giving you information during this time?

A Yeah, he was providing us information, yes, sir.

Q Okay and prior to his arrest when was the last time anyone investigating this case, as far as the Sheriff's Office goes, talked to Mr. Chisolm?

A That last contact would be with Det. Walsh.

Q Do you know what date that was on?

A I'm sorry. October 23, 2007.

Q During that talk or any other talks with Mr. Chisolm did he ever say anything about moving to Florida?

A Not that he disclosed to myself or Det. Walsh or that

was conveyed to me through any of the other investigators.

Q Did he ever give you a forwarding address or any contact information?

A No, sir.

Q When did y'all find out he'd moved to Florida?

A When he withdrew his children from school and re-enrolled them in a Florida school district is how we found him.

Q But when did you find out that he had moved to Florida?

A In November 2007.

Q And how were you able to find him?

A He withdrew his children, I believe it was the Knightsville Elementary School and enrolled them in a school in Florida.

Q Okay. And was it as simple as that?

A No, sir, it wasn't.

Q What else did you have to do?

A At that point in time we contacted the US Marshall's Service. With the help of the US Marshall's Service and the Jacksonville, I believe it was the Sheriff's Office --

MR. CHISOLM: Objection. Relevance.

MR. HILTON: Flight, Your Honor.

THE COURT: Overruled.

A As I was saying, with the assistance of the US Marshall's Service, the Jacksonville Sheriff's Office the

new information as far as telephone numbers that Mr. Chisolm and his wife had provided to the school district, as well as an address that was not registered to him, it was registered to another family member in Florida that they were using for the school enrollment, we had -- the Florida agencies located Mr. Chisolm for us.

MR. HILTON: Please answer any questions Mr. Chisolm may have for you.

MR. CHISOLM: If I may have one second, Your Honor?

THE COURT: Of course.

(Mr. Chisolm confers with Mr. Loy.)

THE COURT: And I know my court reporter is going to want me to tell you to remember --

DET. GIGLIO: To slow down.

THE COURT: Thank you.

MR. CHISOLM: Your Honor, I'd like these two maps marked as Defense Exhibit, I believe 16 and 17.

THE COURT: Okay. Is it 16 or 17?

MR. CHISOLM: 16 and 17, Your Honor.

THE COURT: 16 and 17. Okay, for identification purposes. Which one would you like him to look at first?

(Defendant's Exhibit No. 16, map, was marked for ID only.)

(Defendant's Exhibit No. 17, map, was marked for ID only.)

MIKE GIGLIO - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Do you recognize the map, Detective?

A Do I recognize --

Q Could you tell me what that map is a depiction of?

A Yes, sir. This appears to be Dorchester County to kind of summarize it. It looks like Trolley Road, Orangeburg Road, Beach Hill Road. Similar depiction of the map that the solicitor showed me earlier. The white map that I marked the tower locations on.

Q Would that be a pretty accurate depiction of the locations of the cell phone towers?

A Within reason. I believe the 1049 tower is a little bit closer to Summers Drive than what is depicted on here.

Q Is this a map that you all used during your investigation?

A This looks like one of the similar maps that was prepared by the Emergency Preparedness Division.

THE COURT: And would you give us the number on the back or the number exhibit that is, please.

DET. GIGLIO: Yes, ma'am. This is Defendant Exhibit No. 17.

A Yes, that appears to be one of the maps that was used.

BY MR. CHISOLM:

Q And you said it marks the cell phone towers, and does

it also give an idea of the radius of the cell phone towers?

MR. HILTON: Your Honor, I'm going to object at this point.

THE COURT: Sustained.

MR. CHISOLM: One second, Your Honor.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Do you know how far a phone can be away from a tower it hits on?

A No, sir. I'm not a phone expert.

Q Okay.

MR. CHISOLM: Your Honor, I'd like to move this exhibit in as Exhibit No. 18.

THE COURT: Show it to counsel, please. He's moving it into evidence. I mean.

MR. HILTON: I thought he was just marking it at this point?

THE COURT: No, he said I'm moving it into evidence. Defendant's 18.

MR. HILTON: I would like a little foundation laid.

THE COURT: I understand.

MR. CHISOLM: Could you --

THE COURT: You want --

MR. CHISOLM: I'd like him to view --

(Defendant's Exhibit No. 18, cell

phone test, was marked for ID only.)

THE COURT: Hand the witness the exhibit marked for ID. Defendant's 18 for identification.

A Yes.

BY MR. CHISOLM:

Q Could you tell me what that is or what that appears to be?

A Yes, sir. This is a photocopy of a -- appears to be a test of cell phone records, prepared for cell phone number [redacted]. It's on the Sheriff's Office letterhead. It has the date of 10/30/07 at the top.

Q Can you tell me the date that was again, sir?

A On the top there's a note. I can't read through the photocopy, but it's 10/30/07 noted at the top.

Q On 10/30/07, did you purchase a cell phone from Sun-Com by the number of, I believe it's [redacted].

A Give me just a minute. I want to refer to notes to verify.

(Pause.)

A No, sir, it was October 29th that Det. Walsh and myself in reference to my notes, went to 975 Bacon's Bridge Road and went to a Sun-Com store.

Q And who -- can you tell me what the purpose was in purchasing this phone?

A Yes, sir. We were trying to replicate some of the cell

phone tower locations based on information that we had through the course of our investigation, trying to replicate and seeing what towers we would hit. So we purchased a Sim card for a telephone, and we -- knowing that Sun-Com was your telephone provider at the time, we purchased a Sun-Com Sim card and we conducted basically a rudimentary test, not a true scientific experiment, but a test, and traveled between Haven Oaks community, out to Clubhouse, and what we thought would have been the route of travel back towards Summerville after Mr. Canady's body was disposed of in the Clubhouse community.

Q Did you have another cell phone with you when you performed this test?

A I'd have to refer to my notes.

(Pause.)

A I don't recall.

MR. CHISOLM: If I could have just one second, Your Honor. I apologize.

THE COURT: All right.

BY MR. CHISOLM:

Q Det. Giglio, were you -- when you all performed the search and seizure on my vehicle on 9/27, I believe it was, correct?

A Yes, sir.

Q Did you all recover a cell phone in that vehicle?

A Yes, there was a cell phone inside the vehicle.
Q Could you tell me, did you inventory the cell phone, did you inventory the contents of the cell phone, as in termed the cell phone on to verify the number, text messages, call log, things of that nature?
A Yes, sir. I believe that was conducted on September 28th before that data was lost.
Q Could you tell me that number of that cell phone, if it's in your notes?
A It was telephone number, a cell phone with the telephone number of [redacted] -- area code [redacted]. Also inside that vehicle, I believe there was another Sim card.
Q At the time in question did you believe that cell phone belonged to me?
A Yes, sir. That cell phone was in the vehicle at the time the vehicle was stopped and you were operating it.
Q Was this cell phone taken with you on your test of the [redacted] number?
A Yes, sir. That was the phone that we used with a new Sim card.
Q You used the [redacted] number and the [redacted] number?
A We used the pink and blue cell phone that had a Sim card registered to [redacted] --
Q So you just switched off the Sim card?
A Yes, sir.

Q Okay. And you say you were just doing a test to determine a route that you believed was traveled?

A Yes, sir. We theorized a route of travel between the Haven Oaks community, Azalea Park community, out towards Clubhouse. We weren't exactly sure which route of travel you had taken on the way back from the Clubhouse community so we were trying to verify either include or exclude you in this investigation based on cell phone towers. So we stopped at specific point, you know, every so many miles and then upon completion of this test, we subpoenaed the phone records just as we did the other phone records in this case, for this phone card, this Sim card that we had just bought.

Q And if I provided you with that map, could you show me the route that you believe you took on this test run?

A Yes, sir.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Det. Giglio, if you could, when it's set up, show us the route of travel that you took?

A Sure. Would you like to mark it or just draw it with a laser pointer; how do you want me to do it, sir?

Q (No response.)

A Do you want me to use a marker and draw it or do you want me to just point it out with the laser?

Q You can use a marker, if you would, Detective.

A I'll use black ink so it doesn't get confused.

DET. GIGLIO: I'm sorry, Your Honor, does he want me to call out each location and note it. I want to make sure we're clear on --

BY MR. CHISOLM:

Q I'm sorry. I want you to start at the beginning and tell me where you all started at for your test?

A Yes, sir.

Q And tell me where you started to drive to, and, yes, each one of these stops could you mark or identify and tell me what your presumptive test, the results were?

A Yes, sir. This test began at the Haven Oaks entrance to the Haven Oaks community, the apartment complex, which is right here on Orangeburg Road.

Do you want -- the next point of location that we traveled to would be Orangeburg and Dorchester. So from Haven Oaks traveled Orangeburg Road to Dorchester Road. So we stopped at Orangeburg and Dorchester. From there we traveled to what's known as Lighthouse Crossroads, which is Bacon's Bridge and Dorchester. From there traveled to Langley Drive in Bagwood (sp), which is in the Evergreen community off of Bacon's Bridge Road. From there we went back to Highway 17-A and Dorchester. So we left this location, traveled back and went to Highway 17-A and Dorchester. From there we went to Highway 17-A and 61.

From there we went Highway 17-A to the Clubhouse community, Clubhouse Road, continued down Clubhouse Road to the location the body was found. We took Clubhouse Road, then, to Summers Drive.

COURT REPORTER: Summers?

DET. GIGLIO: Summers Drive. S-u-m-m-e-r-s.

A We went about a mile down Summers Drive to the first bridge. We went to the second bridge. At that time, Summers Drive was a dirt road. When we got to about the three mile point on Summers Drive we stopped again. We stopped at the third bridge. We continued on Summers Drive to Highway 61 and stopped again. From there we continued to Beach Hill Elementary School here. Once we reached Beach Hill Elementary to continued to Highway 61 to 165. Cooks Crossroads.

COURT REPORTER: I'm sorry?

DET. GIGLIO: Cooks Crossroads.

A And returned back to the area of Orangeburg Road near Embassy Drive. Turned -- and we also went to Highway 17-A and Tuppaway Drive. Okay, sir.

BY MR. CHISOLM:

Q Now, could you show me the route that David Leon White said that was taken during the commission of this crime?

A Yes, sir.

Q Could you -- I guess in a different color?

A Yes, sir.
Q Mark that and --
MR. HILTON: Your Honor, I'm going to object that it's already on the board. It's already -- David White has already mapped out the route.
THE COURT: Sustained. Your objection is cumulative.
BY MR. CHISOLM:
Q Are those routes, are there similarities in these routes?
A (No response.)
Q Could you tell me what roads were traveled the same?
A What roads were traveled the same?
Q Yes?
A Orangeburg Road, Highway 17-A, a portion of Clubhouse, Bacon's Bridge. I believe that's it.
Q Did you drive down 17-A?
A Yes, sir.
Q With the phone, you drove down 17-A?
A Yes, sir, we did.
Q You drove down Clubhouse Road?
A Yes, sir.
Q You turned on Summers Drive?
A Yes, sir. We turned on Summers Drive and conducted a test. Yes, sir.
Q Uh-huh. (Affirmative response.) You went up Summers

Drive?

A Yes, sir.

Q You turned onto, is that Beach Hill?

A Yes, sir.

Q From Beach Hill -- where did you turn at after Beach Hill?

A Once we turned onto Beach Hill we continued on Beach Hill Road. We stopped at the Beach Hill Elementary School, because you're at Cooks Crossroads or Highway 165, also known as Bacon's Bridge, continued on Bacon's Bridge Road.

Q And went back towards Evergreen?

A Went back towards Evergreen community.

Q Okay. And Mr. White, the route given to you by Mr. White when you all -- when he gave you all his route, did he say that we traveled down 17-A?

A Yes, sir. Mr. White said that you were operating the motor vehicle at the time of the victim's death, and y'all continued down 17-A following the victim's death to the Clubhouse community.

Q Okay. Then he said we went down Clubhouse?

A Yes, sir.

Q Turned on Summers Road?

A No, sir. He never said you went on Summers Road. Mr. White disclosed after you disposed of the victim's body and dumped Mr. Canady in the ditch, y'all continued on a route

to Clubhouse Road to Highway 165. He never reported Summers Road. This was a speculation on the part of the Sheriff's Office because that was the first road that led back towards Haven Oaks, Summerville area. I wasn't aware at the time of this test that you had continued to Delmar Highway, 165.

Q Allegedly continued. Where did he go after that?

A Right before you reach Highway 165, at the crossroads, you continue on Highway 165 up towards Cooks Crossroads, which is Highway 61 and 165.

Q And you all went to that same area. Did you all cross that same area?

A Yes, we did.

Q Now, you say this was a presumptive test?

A Yes, sir.

Q Could you tell me the results of this test?

A Yes, sir. Actually you have the results there.

Q The towers?

A Yes, sir. It provides the tower locations that were provided to us through Sun-Com when we subpoenaed the records for the phones.

Q And could you tell me when you going down Highway 17-A and Dorchester, what tower did you say you hit?

A At Highway 17-A and Dorchester, which is -- Highway 17-A and Dorchester, if you -- if a phone was used, when this phone was used at this location it would hit off the 162

Checkerboard Lane's tower, or if a phone call was not placed, it wouldn't hit off the 162 Checkerboard tower.

Q And could you tell me from Highway 17-A and Highway 61?

A That's at the location of Jabbo's convenience store. Once again, if someone was using a Sun-Com phone and a call was placed, it would hit the Checkerboard tower if a call was placed.

Q Okay. We understand a phone call was placed, that's why I'm trying to ask you what towers were hit.

A Yes, sir.

Q When you pass Highway 17-A and Clubhouse, could you tell me what tower it was reported that you all hit?

A Highway 17-A and Clubhouse, we hit the 4500 US 17-A -- which is just beyond the Clubhouse community.

Q And Clubhouse Road where the victim was found at, could you tell me what tower --

A Once again, when we did a test from this test phone we hit the Clubhouse Road tower.

Q Okay. And then you said similar you came again at Cooks? Was that Cooks Crossroads. I'm sorry, which road, what is that?

A Cooks Crossroad, right here at Highway 61 and 165.

Q What's the tower for that?

A 516 Beach Hill Road.

Q Okay. In your presumptive test how many towers are

hit? I'm sorry, not how many towers, how many stops were made, how many test points on your test?

A 18.

Q 18?

A Yes, sir.

Q Anywhere inside of your presumptive test did you all hit the Trolley Alley tower?

A No, sir, we did not.

Q And could you tell -- it should be in your notes, but could you tell me if, at any time, from -- I'm sorry, if any time period on 9/13 do my records reflect 162 Checkerboard Lane tower or 4500 Highway 17-A, Clubhouse Road tower?

A No, sir, they do not. I can tell you that. That just means that your phone was not placing a call in those areas.

Q Did Mr. White tell you I was on the phone when these alleged events happened?

A Yes, sir.

Q Okay. So if I was on the phone and I -- I'll redirect myself.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q If Mr. White's testimony is to be believed and I was on the phone while these events were occurring, I would have hit 4500 A -- I'm sorry -- Yes, 4500 17-A, Clubhouse Road tower or 162 Checkerboard Lane, correct?

MR. HILTON: Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Now, you said you went to the Haven Oaks area and you all took photos of the ditch?

A Yes, sir.

(Photos on overhead projector.)

MR. HILTON: State's Exhibit No. 32.

BY MR. CHISOLM:

Q All right. Now, you said I told you the defendant crossed this ditch, correct?

A No, sir. You told Det. Walsh.

Q Oh, Det. Walsh. I apologize.

A You actually pointed out the location --

Q Okay.

A -- that's why we returned to that location.

Q Now, in your investigation of Haven Oaks, you said you interviewed how many people?

A I didn't give a number for Haven Oaks. In the case --

Q In the case?

A -- we indicated over 100 people, but we spoke to people at Haven Oaks.

Q Could you give me an idea of how many people you spoke to in Haven Oaks?

A Roughly, 20, 30, off the top of my head, I'd have to go

back and count.

Q Did you ask anyone at Haven Oaks any questions about the ditch in reference to it being used as a passageway or cut to Azalea Park?

A No, sir. I didn't.

Q Do you have any knowledge of that being used as the usual passageway or cut to Azalea Park for the residents of Haven Oaks?

A Yes, sir, I do, based on my patrol experience.

Q Okay. When you attempted to cross this ditch, did you try to avoid the mud by possibly stepping on that branch or the log that's sitting there or did you purposely just step in the mud?

A Sir, that photo was taken after I took just a few steps in towards the ditch. I didn't even get close to the log before I received mud on my clothes.

Q And you didn't try to avoid it or anything?

A Based on the ground conditions there was no way to avoid it.

Q Have you ever taken a short-cut before?

A Yes, sir.

Q Okay. And when you were younger have you ever played in the woods?

A Yes, sir.

Q Have you ever had a favorite spot or a normal spot that

you go to in the woods or have a normal short-cut that you would use?

A Yes, sir.

Q And you knew it pretty well, correct?

A Yes, sir.

Q And you could possibly navigate it better than a person would who -- better than a person would on their first time coming to that -- on their first time going through that passage?

A Correct.

Q Okay. If the residents -- is it possible that the residents of Haven Oaks know this passage so well and use it so often that we know how to cross this ditch, and since it was your first time being there you just don't know how to cross the ditch and you stepped in mud?

A As I stated earlier, when I took just a few steps towards the ditch area I had mud on my clothes.

Q A few steps towards the ditch area?

A That's right.

Q So -- I'd like to show you State's Exhibit No. 11.

(Photo put up on overhead projector.)

Q Which part of the grassy area did you step on that automatically put mud on your shoe?

A Okay. As I stated, we walked toward this ditch area, and attempted to cross at this point. I can't -- from this

photo, I can't view the actual log. I mean, but basically from this vantage point to cross over the ditch line. So I guess right about in here, once we get off the grass.

Q Before you were a detective you were on the patrol division, yes?

A Yes, sir.

Q And did you ever patrol Haven Oaks?

A Yes, sir.

Q When you -- when police usually come to Haven Oaks, is it a normal occurrence for suspicious people to start running?

A Yes, sir.

Q Could you tell me some of the areas you've seen them running to?

A From Haven Oaks?

Q Yes.

A They run towards apartments, they'll run towards common areas, they'll run to the Azalea Park, they'll run to the ditch area, they'll run towards the main road, towards the Dollar Store.

Q And when they run they have no problem getting away from you, they pretty much navigate through the ditch?

A Yes, sir, they're able to navigate the same as I was able to navigate.

Q Now, before September 27th, when you seized my truck --

A Yes, sir?

Q -- did you ever serve any other search warrants on my truck?

A Yes, sir, we did, on September 17th.

Q Could you tell me about that?

A Yes, sir. I obtained a search warrant for your vehicle because that was the last know location the victim was alive in. We responded to your home address at the Haven Oaks community in Apartment D-1, and made contact with you at your apartment.

MR. CHISOLM: Your Honor, I'd like to offer Defense Exhibit 19.

MR. HILTON: Without objection.

THE COURT: All right. 19 in evidence without objection.

(Defendant's Exhibit No. 19, photo, was marked and entered.)

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Is that an accurate depiction of the vehicle that you served the search warrant on?

A Yes, sir.

MR. CHISOLM: Your Honor, I'd like to move Defense Exhibit No. 18 into evidence.

MR. HILTON: Without objection.

THE COURT: Very well. Exhibit 18, Defendant's Exhibit 18 in evidence without objection.

(Defendant's Exhibit No. 18, 10/30/07 cell test, was marked and entered.)

BY MR. CHISOLM:

Q Det. Giglio -- I'm sorry. You said when you searched this vehicle who helped you search this vehicle, can you tell me?

A I didn't search this vehicle. That would be Lt. Asbell and Lt. Van Doran. Lt. Asbell was head of crime scene.

Q And were any items of evidentiary value recovered at that time, do you recall?

A No, sir. Lt. Asbell did not collect anything in regards to that.

Q Okay, while this search was being conducted you were in the general area?

A Yes, sir.

Q Did you notice the two brand new front tires on the truck as you were there?

A No, sir, I did not.

Q If I showed -- Could you look at that picture and tell me if you notice them now?

A I can tell you there's tires on the vehicle. I can't attest to whether they were brand new or --

Q Could you tell the difference between the front tire

that you're looking at and the back tire that you're looking at?

A Yes, sir, they're different brands.

Q Okay. Can you describe -- are the back tires a more faded shade of black and are the front tires a more shinier version of black?

A From this photo I can't tell if it's Armorall or if it's the condition of the tire. You're asking me to testify to something I can't.

Q Are the tread patterns on the back tires seemingly balding and are the tread patters on the front tires newer looking?

A From the angle of this photo, I can't attest to that.

MR. CHISOLM: Your Honor, I'd like to move --

BY MR. CHISOLM:

Q What's the number?

A That's No. 19.

MR. CHISOLM: -- Defense Exhibit No. 19 into evidence.

THE COURT: I thought it already was in evidence.

MR. CHISOLM: Okay.

THE COURT: If not, is there any objection?

MR. HILTON: No objection.

THE COURT: In evidence without objection.

BY MR. CHISOLM:

Q When you came the second time to serve this warrant, to

serve another warrant on my vehicle, can you tell me -- could you go over that -- our conversation, could you go over what happened that day after the Miranda Warnings?

A Yes, sir. The vehicle that you were operating. The vehicle was stopped at the intersection, I believe, of Ladson and Dorchester and pulled into the Tiger Express.

COURT REPORTER: I'm sorry. Tiger?

DET. GIGLIO: Tiger Express.

A I made contact with you, of course, at the Tiger Express. I executed the Miranda Warnings and began to read you the search warrant. Towards the bottom of the search warrant there is a part that refers to how you obtained a new passenger seat for the vehicle. At which time you stopped me, basically, in reading it, and said, wait, what was that part.

BY MR. CHISOLM:

Q On that part of the warrant does it say that a passenger seat was purchased on 9/14/07?

A I'd have to refer to the warrant. Give me just a second. Yes, sir, it does.

Q Could you tell me which day that purchase actually took place?

A Yes, sir. It was a clerical error on my part in regards to the affidavit. It was September 15th.

Q And do you think I noticed the discrepancy when you

read it to me?

A Are you asking my opinion?

MR. HILTON: I'm going to object.

THE COURT: Sustained.

BY MR. CHISOLM:

Q Now, you said you asked to speak with me if I wanted to go to the LEC to discuss the case?

A Yes, if I recall correctly, that's correct.

Q And you said I declined?

A Yes, sir.

Q Do you recall exactly what I said?

A If you'll give me a minute I'll refer to my notes. I don't want to quote you wrong. Would you like me to just read the paragraph from my notes in regards to that interaction?

Q Just the quote.

A Just the quote parts or --

Q Just the quote part of what I said, Page 37 of your report?

A No, I'm going to speak to a lawyer.

Q And this was your second time searching my vehicle, correct?

A Yes, sir, because the first time we were not aware that you had changed the seat out on September 17th when the first warrant was executed.

Q But the first time no items of evidentiary value were pulled?

A That was Lt. Asbell who conducted that search warrant, it was upon further review of the photographs that he obtained that I noticed the seat pattern had changed. I also noticed that through the phone records that you began searching junkyards and different salvage yards for a Dodge Durango. Based on that information we felt the second search warrant was warranted on the vehicle. This was discussed at length in the detective division, to include my detective Captain at the time, Tom Marshall.

Q Did I look upset from the fact that my truck was being taken from me?

A I don't believe you were happy your vehicle was being seized, no.

Q Did I mention to you while you were taking my vehicle that you had already served a search warrant on my vehicle, why are you taking my vehicle?

A I don't have any reference to that in my notes. I don't recall.

Q Okay. Now, you said it was unusual for me to -- I'm sorry, you said that I did unusual things when you all were in Haven Oaks?

A You know, if I recall correctly what I stated earlier you were observed standing in the common areas observing

what law enforcement was doing. On one account you actually approached the same door that we had just departed from and basically marched towards that same door.

Q Did you do any -- how many interviews did you do with Jennifer Stallings?

A I believe we spoke with her twice.

Q Through the course of your investigation was it ever determined that I frequented that common area a lot?

A During the course of my investigation it was common to see you -- to use the term loitering, I guess, in the Haven Oaks community.

Q And do you see most people in the Haven Oaks community loitering outside, 20 or 30 people at a time?

A Yes, sir. I do, but normally it's been my experience when law enforcement enters the community most people stray away from us and don't gawk or try to observe what we're doing. Most people move the other way.

Q Most of them -- During the course of your investigation did anyone verify for you -- I'm sorry -- did anyone confirm information pertaining to the possibility of Red crossing the ditch to Azalea Park?

MR. HILTON: Objection.

THE COURT: The objection is hearsay?

MR. HILTON: Yes.

THE COURT: Given the way it's asked, it is eliciting

hearsay. Sustained.

BY MR. CHISOLM:

Q Now, you all said I moved to Florida, correct?

A Yes, sir.

Q And how did you -- could you go over that information again, how did you find out that I was in Florida?

A Through the school records. Initially, I believe it was Ms. Tamekka who -- from the Haven Oaks community who told us that, basically, hearsay information that she heard you were moving to New York or Florida, at which time the school district, Dorchester County District 2 School District was contacted because we knew you had minor children. The school district confirmed, yes, the children had been withdrawn, and under state law, I believe they're required to notify what new schools the juvenile children were going to be attending. So the school records were forwarded to Florida.

Q Have you all -- You said I was in contact with law enforcement at least five times throughout your investigation?

A Yes, sir.

Q Do you recall one of the times that I was in contact with law enforcement, deputies being sent to my house -- I'm sorry -- do you recall during your nine -- I believe September 24th interview with David White, asking him if he

had heard of the death threats that I was getting?

MR. HILTON: Objection. Objection.

THE COURT: Sustained.

BY MR. CHISOLM:

Q What all information was obtain for my residence in Florida?

A What information was obtained?

Q Who was the leaseholder -- you said the leaseholder --

A Give me just a minute I'll have to refer to my notes.

THE COURT: And while you refer to those notes, we'll take a very short comfort break, ladies and gentlemen. We'll start back about 4:15. Ladies and gentlemen, step to your jury room. Do not discuss this matter and do not allow anyone to discuss it with you. Smokers, if they go quickly, they can smoke.

(Jury out for break at 4:01 p.m.)

MR. HILTON: Are we at ease, Your Honor?

THE COURT: We are. Enjoy your break. Fifteen minutes.

(Court in recess for afternoon break at 4:02 p.m.)

(Court in session after afternoon break at 4:12 p.m.)

THE COURT: All right. Is the state ready to begin?

MR. HILTON: Yes, ma'am.

MR. CHISOLM: Yes, Your Honor.

(Jury in at 4:12 p.m.)

MIKE GIGLIO - CONTINUED CROSS EXAMINATION

BY MR. CHISOLM:

Q Det. Giglio, what contact information did you have for me in Florida?

A We had no contact information for you in Florida. What we got we obtained from the school district.

Q Okay. Did you have my sister's phone number in Florida?

A Yes, sir, we did obtain your sister's phone number, and we actually spoke to her, I believe.

Q Did I give you all my sister's phone number previously in your investigation?

A Yes, sir, you did.

Q And she lives in Florida?

A That was my understanding.

Q So this one contact phone number you had for me in Florida?

A Yes, sir.

Q Correct?

A Yes, sir.

Q You all put out a warrant for me and Mr. White's arrest on November 6, correct?

A Yes, sir, an arrest warrant was obtained based on probable cause.

Q On November 7th, you contacted Knightsville Elementary in reference to my daughters being checked out and being

enrolled in Gregory Elementary, is that correct?
A (No response.)
Q Gregory Elementary in Jacksonville, Florida, is that correct?
A Yes, sir.
Q Okay. The school in Florida gave you the correct address, yes?
A They gave me an address but couldn't verify an apartment number.
Q Okay. Did they also give you the telephone numbers for me and my sister?
A Yes, sir, they did.
Q And was my telephone number at the time [redacted]?
A That was the number that was provided to us from the school district. Yes, sir.
Q That was the number to my job, is that correct?
A I don't recall what that number was for. That was one of the numbers that was provided to us.
Q It was contact information for my phone number, correct?
A That was the number that was provided to the school that was relayed to us. That's the information we shared with the US Marshall when we were trying to locate you.
Q You didn't call the number?
A No, sir. At that time we had an arrest warrant for

you, and you were considered armed and dangerous. The murder weapon had not been found.

Q Alleged murder weapon, Detective?

MR. HILTON: Objection, Your Honor.

THE COURT: Alleged murder weapon is fine. You may proceed.

BY MR. CHISOLM:

Q On November 8th, US Marshalls and I believe Florida Officers served -- arrested me in an effort to bring me back to South Carolina, right?

A Yes, sir, they arrested you at a vacant apartment registered to your sister's name Ejuhavna.

Q A vacant apartment?

A That's what they reported to me that the apartment appeared vacant.

Q Registered in someone's name?

A Your sister's name.

Q How's it vacant if someone's renting it?

A Unfurnished was what was conveyed to me.

Q Did they give you a report of - an incident report to further your knowledge of what happened, you said the apartment was vacant, did they inform you if I was just arriving home from work or if I had been inside the apartment? Did they inform you of any struggle, any fights? Did they --

MR. HILTON: Objection. Just as to form. Compound question.

THE COURT: It is several questions in one question.

MR. CHISOLM: Yes, Your Honor.

BY MR. CHISOLM:

Q Did they inform you of --

THE COURT: The first question that you asked was did they give you some incident report.

BY MR. CHISOLM:

Q Yes. Did they provide you with an incident report?

A No, sir. I don't believe they did. The only correspondence as far as the reports would be the Waiver of Extradition and some documentation from the Jacksonville Sheriff's Office. We corresponded via telephone and I also sent them copies of the arrest warrants, as well as a photograph of you, specifically your driver's license, DMV photo and any information that I had at that time.

Q You all had -- I apologize.

A Along with the arrest warrant.

Q You all had a working phone number for me and an apartment that was registered in someone's name, is that correct?

A We had an apartment that was registered to your sister and we had an address that the school provided. Like I said, the school did not provide the exact apartment number.

The Jacksonville Sheriff's Office and the US Marshalls attempted to locate you there and through their research identified the apartment belonging to your sister. It was registered or leased in your sister's name, if you will.

Q All right. But you're sure -- I'm sorry -- Did they give you any way of verifying who's name was on the lease?

A (No response.)

Q Did they provide you the two names on the lease, is what I'm asking, that of Natalia Chisolm and Ejuhavna Chisolm.

COURT REPORTER: I'm sorry?

MR. CHISOLM: Natalia -- oh --

COURT REPORTER: Spell the second.

MR. CHISOLM: E-j-u-h-a-v-n-a.

A I don't -- no, sir, I don't recall. I recall them telling me it was in your sister's name. I don't recall them telling me it was in Natalia's name also.

(Mr. Chisolm confers with Mr. Loy.)

MR. CHISOLM: Your Honor, I'd like to mark this for Defense Exhibit 20.

THE COURT: For identification?

MR. CHISOLM: Actually, I'd like to move it into evidence, Your Honor, without objection.

MR. HILTON: That's correct, Your Honor.

THE COURT: All right. This is Defense Exhibit 20 in

evidence without objection. All right.

(Defendant's Exhibit No. 20, warrant, was marked and entered.)

BY MR. CHISOLM:

Q Do you have a copy of my -- me or David White's original arrest warrants?

A Yes, sir, I should. I apologize, it's been, apparently, used during this trial and I no longer have a copy in this folder.

Q That was a copy of David White's but it's the same as mine?

MR. HILTON: Your Honor, I just ask that he have a copy of his and I have one of those.

THE COURT: You have a copy available. Very well.

Just show it to Mr. Chisolm.

(Mr. Chisolm confers with Mr. Loy.)

BY MR. CHISOLM:

Q Would you say as a detective you rely heavily on the expert opinions of forensic science to help solve crimes?

A It's a portion used in our investigation. I wouldn't base my whole investigation based just on forensic science.

Q I'm sorry -- would you consider an expert's final determination on a report after clear and careful review of the evidence presented to them, a true and accurate interpretation of the facts?

A Can you make --

Q And an expert in any certain field, let's say would you consider a forensic pathologist determination of cause of death, time of death. Their expert opinion on those topics are true and accurate interpretation of the facts as they know it to their knowledge or to their opinion?

A From a pathologist, yes, sir.

Q Okay. On the warrants, could you tell me what you listed as the time of death?

A Between the hours of 4:00 a.m. and 5:00 a.m.

Q And this was on November 6, 2007, right, that you applied for this warrant?

A Yes, sir.

Q Was the time of death on November 6, 2007 that you placed on this warrant given to you by a forensic pathologist?

A I'd have to refer to the pathologist report. This is cumulative with the course of the investigation, also with any evidence and information we had.

Q Did the pathologist report determine -- did the pathologist report list an undetermined time of death?

A I'd have to refer to the pathologist report. If you'd give me just a minute.

(Pause.)

A Dr. Presnell's pathology report reports the date of

death as September 13, 2007, the time unknown. As I explained we determine the time of death based on the last verifiable known facts when the victim was alive. Information we obtained during the course of the investigation based on the probable cause that we had.

Q So what you listed was not the opinion of an expert in the field of regards to time of death, correct?

A The day is correct as far as September 13, reflects the pathology report. The time of death as between 4:00 and 5:00 is based on when we know the victim was last alive and the approximate time of death.

Q Can you answer the question?

A Can you repeat what you're --

Q Was the time of death that you provided on the report an opinion given to you by an expert in the field in regards to time of death?

A No. As I stated the pathologist report said the time of death was unknown. This affidavit was based on probable cause, based on facts and information we had that you and Mr. David White were the last two people with the victim. The victim succumbed to a gunshot wound to the head from a 22 caliber pistol, and on the 13th and had never been seen or sighted after being with you or Mr. David White.

Q So what you listed was not a true and accurate correct -- a true and accurate fact --

MR. HILTON: Objection.

Q -- at that time, correct.

MR. HILTON: That's been asked and answered.

THE COURT: Sustained.

BY MR. CHISOLM:

Q You said you listed the means of death as a 22 caliber handgun on this warrant, correct?

A Yes, sir.

Q Did you receive the test results from the projectile removed from the deceased on November 27th, exactly three weeks after you applied for the arrest warrant?

A I'll have to -- are you talking about a SLED report?

Q Yes.

A Yes, I would. State Law Enforcement Division did return a copy of their result that would have went to our crime scene and actually back to the investigators.

Q So on November 6, you had no scientific proof or opinion from an expert to definitively say the projectile was a 22 in caliber bullet, correct?

A That would be based on a cumulative number of things to include --

Q Could you answer my question first and then explain?

A I'm trying research so I can give you the appropriate response, sir.

(Pause.)

(Mr. Chisolm confers with Mr. Loy.)

A If I recall correctly the projectile was recovered from the victim at the time of autopsy and was sent to SLED for further exam and evaluation. I'm trying to find exactly in the notes how we determined that caliber. I'm sure there's some reflection in here. I apologize. We have quite a bit of information.

Mr. Chisolm, I apologize. I can't find the answer to your question at this time.

BY MR. CHISOLM:

Q Did you have expert opinion that a handgun was used at that time?

A No, sir. I --

Q On this warrant did you report that a phone call was made on my phone on the Summers Road area?

A Yes, I did.

Q Did you have an expert opinion to confirm that?

A Yes, sir. That was based on the presumptive test we did with the test cell phone on what we perceived to be the route of travel that was later corrected by Mr. David White when he came forward voluntarily in November and clarified that.

Q Is it correct that mostly everything on that warrant was presumptions that was not confirmed and accurate?

A Mr. Chisolm, this warrant was obtained and signed by a

judge based on probable cause on the facts and information that we had at the time. A judge found probable cause to obtain an arrest warrant for your arrest. This information was later verified through the accounts of your co-defendant, Mr. David White, who verified he was with you at the time of this incident, witnessed you shot and kill the victim, and then gave us further intimate details of the crime to include the alleged, you would say, the alleged murder weapon from the Ashley River that we later recovered.

Q Actually all the incidents are alleged, Detective. You just said he confirmed the whole report, but then you -- did you say that I was not on Summers Road two questions ago?

A Yes, sir. You were not on -- as far as I know you were not on Summers Road. My response to that question was we conducted a test and based on those tests, based on what we perceived to be the route of travel prior to getting further information from Mr. David White was when we were on Summers Road we were able to replicate and hit a similar cell phone tower that was reflected in your cell phone records.

Q And in your reports of the phone call that me and Red, our alleged last phone calls when was the last time that you reported we had contact?

A I can return to the phone records. I know that after the victims death your telephone number never contacted the victim after the morning of September 13th. Your phone never

contacted the victim as you told officers you were looking for him.

Q What time was that?

A Give me just a second to find the phone record and I'll find the time.

(Pause.)

A Do you have a copy of the phone records I could peruse, sir?

(Reads document.)

A When was the last -- what was your question, when was the last time you contacted the victim?

Q Yes.

A The last time your telephone corresponded with the victim was on September 13th at 3:07 a.m.

Q At 3:07 a.m.

A Yes, sir.

Q And you said you searched my vehicle on 9/28/07, yes?

A Crime scene -- crime scene searched it. Yes, sir.

Q And you inventoried my telephone, correct?

A Yes, sir.

Q Could you turn to Page 37 of your report, please?

A Page 37 of my case notes?

Q Your case notes. I'm sorry.

A Sure. Yes, sir.

Q Dated 9/28/07 crime scene notes?

A Yes, sir.
Q Could you read the portion on what you did with the telephone or the information you received from the telephone you recovered?
A 9/13/07, 9:27 p.m. to Red, your girl looking for you, you might want to call her.
Q That was a text message from me to Red at 9:27 p.m. on 9/13/07, correct?
A Yes, sir.
Q That would be how many hours after I allegedly committed this crime?
A 12, 15.
MR. CHISOLM: I have no further questions, Your Honor.
THE COURT: All right. Redirect.
MR. HILTON: Briefly.
THE COURT: All right.

MIKE GIGLIO - REDIRECT EXAMINATION

BY MR. HILTON:
Q Det. Giglio, you said that there were no calls to the victim from the defendant's phone from September 13th, the morning of, until ever, right?
A Correct.
Q On the tests of the cell phone towers that y'all did, these calls when you're hitting 516 Beach Hill Road, 1049 Beach Hill Road, were y'all in the Haven Oaks area at that

time?
A I'd have to look at it. No, sir. We were at the Dorchester Road corridor. When I say Dorchester Road corridor, I mean, Limehouse Crossroads, the Evergreen area.
Q And one last question. The search of the vehicle the defendant asked you about, State's Exhibit 19, I think that was -- well, what day was it, do you remember?
A September 17th.
Q September 17th?
A Yes, sir.
Q Did y'all even know that the victim had been killed in the car at that point?
A No, sir, we didn't.
Q Did you know that a seat had been changed out at that point?
A No, sir. It wasn't until after a review of Lt. Asbell's photographs that I saw the difference in seat patterns cumulative with the phone records really peaked my interest.
Q And this text message on Page 37 of your report says, Your girl looking for you. You might want to call her. Is there any response from Red?
A No, sir, there's not. That's also from a different cell phone number that Mr. Chisolm hadn't provided to us earlier.

MR. HILTON: No further questions.

THE COURT: All right. Recross?

MR. CHISOLM: Yes.

MIKE GIGLIO - RE-CROSS EXAMINATION

BY MR. CHISOLM:

Q During your investigation was it determined that the [redacted] phone number was under the same [redacted] phone number, it was just a switched Sim card?

A Yes, sir.

Q Okay. And did you -- could you confirm -- you testified you were in the Evergreen area when you hit the tower on 516 Beach Hill Road?

A Langley Drive and -- yes, sir. Which is in Evergreen.

Q Okay.

MR. CHISOLM: No further questions.

THE COURT: Very well. Is this witness --

Very well. Call your next witness.

MR. AUSTIN: State call Ira Parnell.

THE CLERK: Please raise your right hand. State your full name for the record.

MR. PARNELL: Name's Ira Byrd Parnell, Jr.

THE CLERK: Could you spell your name, please?

MR. PARNELL: P-a-r-n-e-l-l.

(WHEREUPON, Ira Parnell was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness, Mr. Austin.

MR. AUSTIN: Thank Your Honor.

IRA PARNELL - DIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Parnell, what do you do for a living?

A I'm a firearm and tool mark examiner for the State of South Carolina Law Enforcement Division, also known as SLED.

Q And how long have you been employed with SLED?

A 39 years.

Q What exactly are your duties with SLED?

A I examine guns, both shotguns, rifles and handguns. Fired bullets, fired cartridge cases, unfired ammunition, as well as tools; bolt cutter, plyers, wrenches, screw drivers, etcetera, and marks that are sent into us by investigating agencies around the state. And the general examination that is asked for in the case of firearms is to determine if we can whether it fired a cartridge case or fired a bullet was fired in a particular firearm or not. And with the tools it's basically the same thing, was a mark left at the crime scene made by the tools that the officers bring to us.

Q What's your educational background?

A I'm a graduate of the University of South Carolina with a degree in the area of Criminal Justice. I'm a graduate of the FBI National Academy, our state academy and numerous

other conferences and schools around the nation that are attended by firearm and tool mark examiners for the purpose of continuing education.

I underwent a three year internship program under three course qualified firearm and tool mark examiners at SLED, because at the time I was trained there was no degree program that could be followed at any university or school, so we had to do on the job training apprenticeship type training under the tutorledge of the qualified examiners there. And during that time I assisted those examiners by watching what they were doing, assisting them by test firing guns, examining ammunition components and basically continuing through that process to the point that they felt I was ready to begin doing my own examinations.

Q Can you explain the process of firearms identification and what makes that possible?

A A simple firearms examination can consist of a firearm, whether, again, it be a handgun or a long gun, and some fired components, whether it's a fired bullet, a shot shell or a cartridge case. As I said earlier the general question that's ask is was that fired component fired by the gun that was brought in.

In order to make that determination certain testing is done by the examiner. We first examine the firearm for safety. We then examine the ammunition component to

determine whether or not it's the correct caliber that could have been fired in this gun or not. Once these things are figured out we then continue with the examination process. We test fire the gun using similar or the same ammunition. We microscopically compare the test that we fire utilizing a forensic comparison microscope. We test fire, by the way, into a water tank. The water slows the bullet down and does not add to or take away from the marks that are left on the outside the bullet by the inside of the gun barrel.

Now, once we've established the fact or not that the test that we fired are marked in the same fashion, we then microscopically compare the evidence with the test. If sufficient marks of agreement are found then we say in our opinion that that ammunition component brought in as evidence was fired by the gun that was submitted. If we find sufficient differences then we also say that the fired ammunition component was not fired by the gun brought in.

The way we determine this is by examining individual random unintentional defects on the inside and various area of the firearm. These defects happen during manufacture. They're not intentionally done by the manufacturer, but they nonetheless occur and they make our discipline possible. These are reproducing marks that appear to a great degree on every fired component that is fired in a particular gun, and once we establish that this firearm marks each bullet or

cartridge casing the same way, then we can say or offer an opinion whether a particular fired bullet or cartridge case was or was not fired in the gun submitted for comparison

Q Let me show you what's been marked as State's Exhibit Nos. 14 and 18. Do you recognize these items?

Mr. Parnell, before you look at those how many times have you testified in court?

A Approximately, 614.

MR. AUSTIN: Your Honor, at this time, I'd like to offer Mr. Parnell as an expert in firearms and ballistics.

THE COURT: All right. Is there any voir dire?

MR. CHISOLM: No, Your Honor.

THE COURT: Any objection?

MR. CHISOLM: No, Your Honor.

THE COURT: Very well. He is so qualified.

A Yes, sir. I've examined these items, specifically State's 14 and 18.

BY MR. AUSTIN:

Q And were you able to clean that up and actually fire it?

A Yes, sir, I was.

Q And did it have a bullet in it when you first examined it?

A There was an unfired cartridge, yes, sir.

Q Okay, but had you been advised that it had been under

water at some point before you received it?

A As I received it it was submerged in a small cooler of the water in which it was recovered, because that is the way that we recommend that our officers pick guns up and bring them to us if they were found in water. If they cannot be immediately cleaned using solvent and proper technique, then we ask them to bring them in a container of that same water which was done in this case.

Q Even though it had been in water you could still fire it just fine?

A Well, not immediately.

Q Right.

A I had to do some cleaning and removal of dirt and other debris, but yes, after it was photographed, documented and checked for safety it was fired with no problem at all.

Q And it didn't have a magazine in it when you first received the gun?

A No, sir.

Q That didn't affect the operation?

A No, sir. We were able to fire it singly.

Q Did you make a comparison of those two items?

A In reference to State's Exhibit 18, it's a fired 22 caliber bullet, and I know this because of its overall physical characteristics and by the weight and a couple years experience looking at them. This particular

projectile, States Exhibit 18, is badly damaged. It's badly flattened. It's not in the condition that it would be as you would find an unfired cartridge. Of course, it's run into several things since it was fired. I examined and compared the tests that I fired in State's Exhibit 14, this firearm there, against State's Exhibit 18, this bullet. The bullet was in such bad condition that I could not tell whether or not State's Exhibit 18, this bullet was or was not fired in State's Exhibit 14, this firearm here.

Q You may have gone over this, but could you tell what caliber brand the gun was?

A Yes. It's a 22 caliber firearm specifically made to fire 22 long caliber rifle ammunition.

Q And that's what the projectile is?

A State's Exhibit 18 has all the physical characteristics and the weight consistent with being a 22 long rifle caliber bullet, correct.

Q And is that a handgun you'd typically see in criminal cases?

A Not too often. The Browning Buck Mark is a good quality handgun. We don't typically see them specifically involved in too many cases. I've examined a few, but not very many.

Q And so in your expert opinion is that handgun consistent with one that had been under water for several

months?

A Yes, sir, based on the etching and the removal of the blueing and the splotchiness, the rust. Yes, it's definitely consistent with a firearm that's been under water for a period of time.

Q Mr. Parnell, in your expert opinion is that projectile consistent with one that would have been fired from that handgun?

A Yes, it's consistent with it's overall characteristics and in weight and so forth with a 22 long caliber bullet, which is what State's Exhibit No. 14 is designed to fire.

Q Thank you. Please answer any questions that Mr. Chisolm may have.

THE COURT: Cross-examination?

MR. CHISOLM: Yes, Your Honor.

IRA PARNELL - CROSS-EXAMINATION

BY MR. CHISOLM:

Q How are you doing, sir?

A Fine, sir.

Q 614.

A 15 with today.

Q You said that the weapon appears to have been under water for several months?

A I can't tell you how long it was under water. It was a period of time.

Q Period of time?
A It's longer than a day.
Q Right.
A But according to whether it's brackish salt water or fresh water, you know, it's been underwater, consistent with having been under water for a period of time.
Q Okay. And what type of ammun -- what type of projectile is that, again, you said a 22 long rifle bullet?
A State's Exhibit 18?
Q Yes.
A Yes. It's consistent in its weight and its overall -- what it looks like. It looks like a 22 long rifle, yes.
Q And how many -- could you tell me how many different -- what type of weapons are available that would fire a 22 long rifle bullet; how many different versions of 22 are there?
A Hundreds.
Q Hundreds?
A A lot. I couldn't give you a number, but there are many hundreds of 22 caliber firearms.
Q And it could be potentially fired from any of those?
A Correct.
MR. CHISOLM: I have no further questions.
THE COURT: Any redirect?
MR. AUSTIN: Nothing from the state, Your Honor.
THE COURT: All right. Is this witness free to leave?

Thursday and, of course, this morning to go through, Mr. Hilton and look at the evidence?

MR. HILTON: I did.

THE COURT: All right. And made me believe knowing that that is your typical procedure that maybe your are close to resting; is that correct?

MR. HILTON: That is correct, Your Honor.

THE COURT: And are you prepared to rest off the record and then again in front of the jury?

MR. HILTON: I am, Your Honor.

THE COURT: Very well. And then the state would rest?

MR. HILTON: We do.

THE COURT: Very well. With that, I would then ask for motions.

MR. CHISOLM: Your Honor, I make a motion for a directed verdict.

THE COURT: Thank you so much. I would respectfully deny your motion, Mr. Chisolm. It is the Court's duty to view not the weight of the evidence, but whether or not there is evidence on each and every element of the offense from which the jury could make a determination of guilt is for the jury to weigh the evidence, and I would find that there is evidence on each and every element of the offense of murder before the jury.

I would respectfully deny your motion, noting your

exception thereto.

Now, let me -- here's -- now I would ask this question of you, at this point, whether or not you're going to be presenting witnesses?

MR. CHISOLM: Your Honor, I have an out-of-state witness that I previously was just able to get in contract with. They should be here. I haven't been allowed to use the phone. If I could possibly call and see if they're in route, if not, then I will not be presenting any witnesses.

THE COURT: All right. Let me ask you this question. What I'd like to do then before -- and I'll afford you that opportunity, certainly, but what I'd like to do before we do that is to give you some -- talk to you about your right to testify.

I'm going to ask you to raise your hand at this time, your right hand. Thank you so much.

(WHEREUPON, Donsurvi Chisolm was sworn to tell the truth.)

THE COURT: Very well. And state your full name for the record.

MR. CHISOLM: Donsurvi Chisolm.

THE COURT: Thank you. Mr. Chisolm, at this time, I'm going to explain to you certain of your rights. If you do not understand anything that I say, please let me know. If you want me to explain anything in more detail, please let

Ejuhavna please stand at this time. I find no one standing. Thank you so much.

Ladies and gentlemen, and thank you, Ms. Havna (sic). Ladies and gentlemen, it is as you know -- well, at this time I'll call on the state, Mr. Hilton.

MR. HILTON: Your Honor, I think it's Ms. Ejuhavna Chisolm.

THE COURT: Ejuhavna Chisolm. Thank you.

MR. HILTON: And at this time the state would rest.

THE COURT: Thank you for that help. Okay. Chisolm is her last name. Ejuhavna Chisolm, related by blood or marriage, if so please stand. No one is standing.

All right. Ladies and gentlemen, the state has now rested, which means you have heard the witnesses and received the evidence, which you will from the state in the state's case in chief, and next we will hear from Mr. Chisolm.

Mr. Chisolm.

MR. CHISOLM: The defense would like to call to the stand Ejuhavna Chisolm.

THE COURT: Very well. Yes, ma'am, if you'd come along please and be sworn. Just come on around right here. Yes, ma'am.

THE CLERK: Please raise your right hand and state your full name for the record.

MS. CHISOLM: Ejuhavna Chisolm.

THE CLERK: Could you spell your name, please.

MS. CHISOLM: E-j-u-h-a-v-n-a.

(WHEREUPON, Ejuhavna Chisolm was sworn to tell the truth.)

THE CLERK: Thank you.

THE COURT: Your witness, Mr. Chisolm.

MR. CHISOLM: Thank Your Honor.

EJUHAVNA CHISOLM - DIRECT EXAMINATION

BY MR. CHISOLM:

Q How are you doing, Eju?

A Good morning.

Q At the time I was arrested, do you know what type of vehicle I was previously driving?

A The Durango.

Q Okay, could you be a little more specific?

A Gray, 2005 Dodge Durango.

Q Do you know where I got this vehicle?

A You purchased it from me.

Q Okay. Could you tell me around what time this purchase or exchange took place?

A Sometime in 2005 or 2006.

Q Okay.

MR. CHISOLM: Your Honor, present recollection refreshed. I'd like to show the witness --

THE COURT: A document.

MR. CHISOLM: A document.

THE COURT: Any objection, Mr. Hilton?

MR. HILTON: No objection.

THE COURT: Very well.

BY MR. CHISOLM:

Q Do you recognize this document, Ms. Chisolm?

A I do.

Q And could you tell me what this document is?

A It's a loan that Natalia Chisolm got in order to cover the cost of the vehicle.

Q Could you tell me the date this vehicle was purchased?

A September 24, 2007.

Q Okay. Could you tell me the condition this vehicle was in when it was purchased?

A It was in fair condition.

Q Okay, can you tell me the condition of the interior of the vehicle, to your recollection?

A There were some burn spots on the passenger side, the carpet was a little dirty. In the back where my kids were they have like some piece of candy that melted and couldn't get cleaned. The interior was just okay.

Q Okay.

A And --

Q Continue.

A Okay. And I had the seat belt that I had cut out on the passenger side.

Q Could you tell me why?

A Yeah, because I was in an abusive relationship and because of that one of the things the person that I was in the relationship with would do, I never would drive with him. So he would drive, I'd be here, and so if it's he and I in the car and we were arguing or whatever, he's always put his hand up to stop me or -- my hair was longer than this so he'd grab my hair and like it was just a way to control -- he'd just control me on that side of the car. And so I would jump out of the car sometimes, and one time when I tried to jump out of the car, I kind of choked myself so I snuck in and cut the seat belts on it when I need to jump out the car, I could jump out the car.

Q Do you know where I was living at the time of my arrest?

A In Jacksonville, Florida with me.

Q Okay. Could you tell me the living arrangements at the time, as to your recollection?

A We had a four bedroom apartment. Two bedrooms on one side and two bedrooms on the other side. We had got an apartment at big because at the time, I had three kids and I think y'all had two and one more on the way. This same abusive relationship that I was in and I wanted my brother

to come move in with me, because I had got a really good job, and I didn't want to leave Jacksonville. I wanted to stay in Jacksonville and him and his wife agreed to come. They said they would help me out with my kids.

Q Do you recall furniture being in this apartment?

A Yes.

MR. CHISOLM: I have no further questions.

THE COURT: All right. Cross-examination.

EJUHAVNA CHISOLM - CROSS-EXAMINATION

BY MR. HILTON:

Q Ms. Chisolm, that abusive relationship, when did you decide to cut out the seatbelt?

A I couldn't tell you exactly, but it was before my brother moved.

Q It was before he bought the truck, is that what you're saying?

A Yes.

Q And before -- excuse me -- when you went to cut out the seatbelt how did you do that?

A With a knife?

Q You just cut the strap?

A Yes.

Q Okay. Do you remember where you cut it?

A I don't remember where.

Q You don't remember?

A I mean, I cut this part, this part stays but I cut this side off.

Q You just cut it near the little guide?

A I was in a hurry. I honestly cannot tell you where I cut it. It was something that I snuck and did. Really, quick to get it off so if that ever happened again, I could just get out the car.

Q And the seatbelt, did it just reel up down in the thing?

A I rolled up.

Q Do you remember talking to police --

MR. HILTON: Just one minute.

THE COURT: All right.

BY MR. HILTON:

Q Do you remember back on October 22, 2007, when police were trying to get in touch with you in reference to this case?

A If you'll talk about it a little more?

Q Do you remember talking to a Det. Mike Giglio, Det. Linda Walsh?

A You've got to tell me a little bit more about the conversation, please?

Q I'll tell you. Do you remember talking to them about the seatbelt and the seat of the car?

A Oh, yeah. I remember talking to them about the

condition of the car.

Q And that was back in 2007, right?

A Right.

Q Much closer to the time when you sold the car, correct?

A But he had been -- I had two cars. The situation with the cars was I had moved from Seattle to Florida in 2005. One of the other cars that I had, it was in my name, but it was for a friend, she stopped paying on it. Even though the transaction didn't occur until 2007, he and his wife they either would be driving the Durango or I had a gold Pontiac. So we switched back and forth. I came to South Carolina he's drive that. You know, just switched back and forth. The people that I talked to, I had put in a claim with Nationwide Insurance to get that side of the car fixed because I wanted to turn the car over to my brother in good condition, when I realized that they were going to -- when Navy Federal approved them.

Q But my question, Ms. Chisolm, is do you remember talking to Det. Walsh and Det. Giglio in reference to the seat and seatbelt?

A I don't know.

Q Do you remember telling them that your boyfriend had wrecked into a fence and messed up the seatbelt?

A No.

Q You don't remember telling them that?

A No.
Q Do you remember telling them that the -- and the seatbelt you were referring to, you told Det. Walsh and Det. Giglio was the rear passenger seat and it was halfway messed up. You don't remember that either?
A No. My boyfriend, he kicked the doors, there's a lot of damage done to that car. So I don't. Car cosmetics, that had to be repaired and at one point probably 2006 during that time. It wasn't the seatbelt, it was the rear back was like it was back into like a U-haul truck or something. So the car had --
Q My question is do you remember telling the police that the rear passenger seatbelt was halfway messed up and it was messed up because your boyfriend wrecked into a fence?
A I do not telling them that --
Q Okay.
A -- but if I said it --
Q Do you remember in reference to the seat saying that there were cigarette burns in the seat on the driver's side?
A No.
Q Okay.
A If we pulled -- I'm sure you have pictures on the inside, you'll see that the cigarette burns were on the passenger side.
Q And do you remember telling police that you're not sure

about the passenger side having any damage?

A No.

Q You don't remember that?

A No, not at all.

Q I'm reading that from their report, that's made up?

A That's their report. That's not nothing that I put in writing. Nothing was wrong with the driver's side. It was the passenger side. I don't remember that.

Q Thank you, Ms. Chisolm.

A You're welcome, sir.

THE COURT: Redirect.

MR. CHISOLM: I have no more questions for this witness, Your Honor.

THE COURT: And is this witness free to leave?

MR. CHISOLM: Yes, Your Honor.

THE COURT: No objection?

MR. HILTON: No objection, Your Honor.

THE COURT: You're free to go. Thank you.

MR. CHISOLM: Your Honor, I apologize. I wanted to submit in evidence Defense Exhibit --

THE COURT: Whatever the next number is.

MR. CHISOLM: -- 21.

THE COURT: Any objection?

MR. CHISOLM: two page document, without objection.

(Mr. Chisolm confers with Mr. Loy.)

MR. HILTON: No objection, Your Honor.

THE COURT: Very well.

(Defendant's Exhibit No. 21, 2 page document, was marked and entered.)

THE COURT: That'd be good. Excellent. Thank you.

All right. Call your next witness.

MR. CHISOLM: The defense rest, Your Honor.

THE COURT: Very well. Will there be any rebuttal or reply?

MR. HILTON: There will not.

THE COURT: Very well. Ladies and gentlemen, you have now heard the witnesses and received the evidence which you will in this case. What remains for us are the arguments of counsel and Mr. Chisolm and my charge or instruction on the law. It also signifies to me that there are matters that I must take up outside your presence. So ladies and gentlemen, I'm going to ask you to step to your jury room. Please do not discuss this matter or allow anyone to discuss it with you. You've not heard the arguments or my charge on the law. You are not prepared to deliberate, so please keep that in mind.

If you will please go to your jury room. Anybody who needs to smoke now is a good time to smoke. Take your break, because when we return we will be getting into the arguments and the charge.

Thank you so much. Just step to your jury room.

(Jury out at 10:12 a.m.)

THE COURT: All right. Motions?

MR. CHISOLM: Your Honor, I just renew my earlier motions for directed verdict.

THE COURT: Thank you so much. And again I find there is evidence on each and every element of the offense for which the jury could find guilt. I respectfully deny your motion noting your exception thereto.

Now, what's going -- Mr. Chisolm, earlier I instructed you regarding your ability to testify. Obviously you have chosen not to testify. Is that correct?

MR. CHISOLM: Yes, Your Honor.

THE COURT: Obviously, at this moment if you were to change your mind I'd have to have the jury come back and you would have that opportunity. But we discussed it earlier and I think you said you had one witness at that point, but you do not intend to testify, do not wish to testify?

MR. CHISOLM: I do not wish to testify, Your Honor.

THE COURT: Thank you, sir. Now, what's going to be handed to you are two things, number one, my proposed charge.

MR. CHISOLM: Yes, Your Honor.

THE COURT: And the proposed verdict form. If you will take a minute to look at that. In fact, I think what we'll

After you have heard the closing arguments, then there will be a very short break which you will understand when we reach that point. And then I will deliver the instruction on the charge to you which I think is probably going to take me about 25 minutes. And then there will be another very short break that I'll explain when we reach that point, and then, ladies and gentlemen, you will receive this case for your deliberations.

Ladies and gentleman, at this time, I ask that you please draw close as we listen to the closing arguments.

Mr. Hilton.

MR. HILTON: Thank you, ladies and gentlemen, Mr. Foreman. I want to thank y'all for being here through the course of last week for being patient and listening to a case that y'all had nothing to do with. Fortunately, that's the way it is, and I say fortunate because that's what's fair. I say fortunate because you can come in here and render a verdict that's based on the facts of the case, not based on my spin on things, not based on the defendant's spin on things. You listen to the facts from that stand, see the evidence that's presented and you render a verdict based on that information.

As Judge mentioned to you a moment ago, I'm going to talk to you about the law in the case. Then Mr. Chisolm is going to get up and he'll have an opportunity to talk to you

about his version of the facts. Not testifying, but what he thought the facts were coming from the witness stand and the facts that were introduced into evidence. After that, I'll be able to get up and talk to you again.

So what's the law in this case. I mentioned that the defendant's charged with murder. Murder is the unlawful killing of another with malice aforethought. Either expressed malice or implied malice.

The unlawful killing of another. September 13, 2011, it was exactly four years from Tuesday when we started this trial, Craig Michael Canady was killed. There is no question about that. He's dead. There's pictures of him dead. The pathologist testified that he died from a single gunshot wound to the left side of the head.

There's no question about the killing of another. So with malice. What is malice. There's couple of definitions of malice. The Judge will give you some definitions. I'll just read you a couple of them. Malice is the wrongful intent to injure another. It indicates a wicked or depraved spirit intent on doing wrong. An intentional or wrongful act without just cause or excuse. Malice doesn't require ill will towards the individual but rather signifies a general malignant recklessness of the lives and safety of others or a condition of mind which show a heart regardless of social duty and fatally bent on mischief.

That's one of those things. Y'all know what malice is. Somebody takes a gun, puts it to somebody's head, pulls the trigger and dumps their body in a ditch. That's malice. That's malice.

So the unlawful killing of another with malice either expressed or implied malice isn't a particular type of malice, that's how you determine whether malice existed.

Express malice is a little more obvious. Somebody says that, that is an expression of malice. That's not the only way you get expressed malice. There's no evidence of that here, but where there is evidence of expressed malice in this case is right after the shot occurred, we heard testimony about him mumbling something about, yeah, that MF-er. And that was David White's testimony. That's evidence of expressed malice.

And then there's inferred malice or implied malice. Again, like I mentioned a moment ago when you put a gun to somebody's head and you dump their body in a ditch after shooting them. That's inferred malice. The Judge will instruct you that malice can be inferred from the use of a deadly weapon.

Folks, I submit to you, State's Exhibit 14 was the deadly weapon on the night of September 13, 2007.

Craig Canady, Red, died almost immediately after being shot in the head with this pistol on September 13, 2007. So

if you believe beyond a reasonable doubt the defendant is the one who did it, he's guilty of murder.

I mentioned reasonable doubt, and I want to talk to you about what that is. A lot of times throughout the course of the trial, Mr. Chisolm would try to hash out particular points. You know, the gun was found at Scully's fishing hole. There's a statement from George Gallardo, left one time -- and he says in here left one time and says right the other time. And he testified, he didn't know his right or his left any better than I do, but he was sure about one this, that is was the passenger seat, and he also hashed out that, you know, Shakara Rose couldn't say for certain that he was the one who said, in Haven Oaks, yeah, Red's in a ditch stinking. And so all of these things, I suspect, he's going to get up here and say that's reasonable doubt, reasonable doubt, and you've got to find me not guilty.

I want you to be real clear on what reasonable doubt it, and there's a couple of definitions, and the Judge will charge you with those definitions. One of those definitions is reasonable doubt is doubt that causes a juror to hesitate to act. Folks, I hesitate to act when I pull out from a stop sign. I hesitate to act before I make some big purchase, and so while that is a definition, I submit to you that definition is a little bit confusing, it's a little bit misleading. This is a serious case, and you should hesitate

to act.

The Judge will also charge you with another definition and that's, after considering the evidence in the case if you're firmly convinced of the defendant's guilt then you're to find him guilty.

Keep in mind that proof beyond a reasonable doubt is just that. It's not proof beyond a shadow of a doubt or every possible doubt or every imagination of what could have possibly happened that night. It's proof beyond a reasonable doubt. There are very few things in life we know with absolute certainty, and that's not required in a criminal case. Proof beyond a reasonable doubt is a strong burden and it should be a strong burden, but it's not an impossible burden. If it were, nobody would ever get convicted for anything.

Judge may charge you on several other areas of law, but there's one more I want to talk to you about, and that's direct verses circumstantial evidence.

Direct evidence is something that comes from our five senses. I saw something, I smelled it, tasted it, heard it. It's something that we have first hand knowledge of, or the witness has first hand knowledge of.

David White's testimony in this case is direct evidence. He said, I saw the flash, I heard the pop. The dude took his last breath and slumped over. That's direct

evidence. That's pretty clear. You've got an eye-witness that says this is what happened.

Circumstantial evidence is generally everything else. It's stuff that you can deduce from other facts that lead you to a conclusion.

The Judge may or may not give you an example, but an example of circumstantial evidence goes something like this. You come into the courthouse this morning and it's cloudy outside. You hear some thunder in the distance. You come in and the shades are down much like they are now and you're paying attention to me and Mr. Chisolm, you're not looking out the window. Lunch time comes around and you go out to your car. There's puddles on the sidewalk, your car has droplets of water all over it. Your shoes get damp on your way out to your car. You didn't have to see the rain fall from the sky to know that it rained, and that's what circumstantial evidence is. And that's true in criminal cases as well.

The Judge will instruct you that circumstantial evidence is just as good as direct evidence, and here we're fortunate enough to have both, both an eye-witness and facts and circumstances to know that the rain came down on September 13, 2007.

Thank you.

THE COURT: Thank you, Mr. Hilton.

Mr. Chisolm.

MR. CHISOLM: What is the truth. The truth is that which will stand strong, that which will not falter and that which will not change. The truth will stand through confusion, stand through doubt and stand through accusations and stand through lies.

In opening, I challenged you search for the light of truth. Have you found it.

During opening statements you were offered the intentions of both parties, but only one can prove to be true. The state has offered you fear, doubt, confusion, and lies. I have offered you truth.

Det. Bistromowitz, Tamekka Williams, Det. Greer, and Det. Giglio have all testified to my initial interest in helping and my continual willingness to bring forth information in this case. At what point does it become unusual for a friend to be concerned and want to help. Did officers really insinuate in their testimony that they'd rather a person run than help.

My initial statement was given and nothing was held back. When detectives came upon entire discrepancy my response was simple. Check the phone records. Science, mathematics and technology, they don't lie.

Det. Giglio testified he made contact with me at least five times. Det. Bistromowitz at least two times. Det.

Greer, at least once over a two month time period. The majority of the contact was initiated by me and ended with me giving more information. The facts don't lie.

David White admits he was interrogated at length twice. He admits this was done by four detectives and his own mother was even brought in as a part of the detectives questionable tactics. The facts don't lie. And after two months we were both arrested. The facts don't lie, but unfortunately people do.

Det. Giglio, through cross-examination admitted our arrest warrants were more speculation than true and accurate facts. The coroner did not give a time of death. The ballistics expert didn't give a report until weeks after the arrest and Det. Giglio, himself, admitted the claims of phone calls on Summers Road were mere assumptions.

Yes, the warrant may have been officially signed, but the information on it was not accurate and true.

According to David White, he withstood four detectives and his mother with his ability to lie, but on cross-examination his lies were proven in less than 30 minutes.

Phone records of both me and the deceased proved the calls he claimed to be untrue and my phone on the opposite side of town when the alleged events took place. The towers drawn by Det. Giglio will show you that the Beach Hill tower and Trolley Alley tower are at least six and a-half miles

apart.

The state's theory that I was on the far side of the Beach Hill tower, but the phone records put me near Trolley Alley in less than one minute and vise-versa. The question is, can my vehicle travel at the 363 miles per hour needed to cover 6.5 miles in one minute.

The arriving officers and forensic detectives testified that the stain Mr. White claimed was not in accordance with the facts they recall. Forensic science also proved that the seat cushion would not have covered -- would have covered little or nothing going against another claim of Mr. White. The coroner did not confirm his claims of a close range fire. She testified it could have been across a room. The ballistics expert did not verify this handgun as the murder weapon. In fact, this weapon was recovered with no clip in the area of another weapon at a fishing hole he admitted he frequented less than two miles from his home.

This weapon was found with one round in it, but no clip. David White says it was allegedly in full view before being thrown. The question is, how is a gun fired and reloaded with no clip. When asked by the state if the gun had been under water for several months the expert responded with a yes. If it was under water at the time of these alleged events how was it used? These were the lies.

The state gave you Shaquanda White, who agreed with

both the state and the defense. This was the confusion.

The state gave you Shakara Rose, two LKQ employees and Tom Simonelli. This was the doubt. Ms. Rose can remember her own statements and claims she out of 30 people heard a comment. Where are the other 29 people? The parts puller who asked for two seats, who pulled one and was confused by his own statement just like Ms. Rose. The manager couldn't remember if the purchase took place, and Tom said he needed to speak with his wife. It should be noted that Tom's purchase never went through and neither LKQ employee identified me as the purchaser even though I was a few feet away from them. Why is that important? Because as Det. Greer told you, they didn't have to. I told her and Det. Walsh of my purchase. Where the old seat was and where and when I changed the seat. I even put them in touch with the witness to verify it giving them more information they did not have.

I gave them the previous owner info and the insurance claim info to verify the pre-dated claims, and Gerald's Tire info. The question you should ask if why didn't Det. Walsh come testify as to the investigative results on the insurance claims or Gerald's Tires info. Did those results go against their theory of guilt? Yes. The facts show repairs were being made to my vehicle, but the facts show that on two separate occasions my vehicle was cleared of any

DNA evidence of the deceased.

This is a very important fact. The state's claim is not one of minor injury. The state's claim is that someone was shot in the head inside a closed in space. How could this be -- how could this be done without leaving a trace of blood? The state expects you to believe that forensic science misses things and cannot detect at all. But the opposite would be true and forensic science would praised in a different set of circumstances.

Does the state expect us to leave our experiences at home. Are we expected to become one-sided and one-minded. Facts do not cease to exist because they are ignored. The parts puller statement is clear, that the caller asked for a left. Would we have had an entire trial about a left seat if I was given time to change that out, as well?

Where is the motive? No one has gotten on the stand and testified to any problems or altercations between me and the deceased. It was said we went to rob someone. Does that person exist? Why hasn't Siquan Moody testified to being called to information pertaining to a robbery. Red was allegedly killed in the early morning hours of September 13th. This left a whole day of unaccounted time. Has anyone testified as to what I was doing on that day? According to Det. Giglio's testimony I texted my friend at 9:30 at night to tell him his girl was looking for him.

That's more than 12 hours after I allegedly committed this crime. This was not volunteer information. This was found out because the detectives took my phone. The question I ask is why would someone text a person if they allegedly knew they wouldn't answer.

The state has proven what I admitted of my own free will. That I was fixing my truck. Science has proven that I did not commit murder. In order for the state's allegations to ring true, the laws of physics would have stopped working on September 13, 2007. Facts do not cease to exist simply because they are ignored.

In a final attempt to distract you from the truth, Det. Giglio spoke of mud and a move to Florida two months later.

Ask yourself, would a person step in mud if they knew an obvious way around it, and how does one avoid detection when two contact numbers, kids registered in school, a job and an apartment in a family name?

The state has not presented you with proof beyond a reasonable doubt. The state has provided you with absolute doubt.

I gave my recollection of events to detectives and relied on technology to clear any discrepancy that may have arisen. That is the truth.

That which is true need only be said once and it will stand strong. That which is not true must be said a 1,000

times to withstand the test of time.

We are all innocent until proven guilty, and I trust you will make the right choice and come back with a verdict of not guilty.

Thank you.

THE COURT: Thank you, Mr. Chisolm.

Mr. Hilton.

MR. HILTON: Thank you ladies and gentlemen.

Again, I told you in opening statements that a trial was like a puzzle, and that you get that evidence a little bit at the time and try to fit those pieces together. So what I want to do for you now, is try to put that puzzle together. And you've probably already done this in your mind.

I marched up about 20 witnesses in this case, and every one of them had something important to say. They told their story in their own words, what happened on September 13, 2007, and the days just prior and just after, the senseless killing of Craig Canady in this case, by that defendant, Donsurvi Chisolm.

You heard those witnesses just like I did. So let's talk about what some of them said.

Tonia Platt, first witness in the case. She said on the 15th, they were out there hunting in the Clubhouse area. She went to get in some dogs. Stopped, saw some buzzards in

the creek. She found something then she will probably never forget the rest of her life, a dead body laying in a ditch. She got her kid out of there. She called her husband. He called 911, the Sheriff's Office responded.

You then heard from Lt. Joe Burnette. He was one of the people that responded out there initially. He roped off the scene and secured it so that crime scene and detectives could get out there.

Then you heard from Det. Bistromowitz. He was one of the detectives in the case, and he told you, as well as, Jamie Zensen, that at that time they weren't even sure what they were dealing with. They didn't know how it was. They didn't know if he'd been hit by a car. They didn't know what they were dealing with. All they knew was they had a body in a ditch at that point.

And from those customer cards they were able to find out the name of Tamekka Williams, and they went and talked to her. And Tamekka didn't know what was going on when they got there. She unfortunately had an argument with her boyfriend, Red, he packed up his stuff, stacked it in her house, and he left. Told her he was going to stay with someone and that was the last time she heard from him. She had mentioned something about Thursday and then said she wasn't sure of the exact date. So Thursday, Friday, Saturday. No Red. She called and he wouldn't answer. And

she said that wasn't like him, even if he was mad at her he would answer the phone.

Saturday afternoon, police came to visit after finding out her name was on that CVS card. So what happens they go to her apartment. Hey, Tamekka, we found someone dead in a ditch with your CVS card, can you tell us who it is. And she breaks down and realizes at that point that her boyfriend, Craig Canady, had been killed. By who, she doesn't know. She gives some names for the police to check.

Who comes in at this time, that man right over there, the defendant, and he tells police, hey, by the way, the last time I saw Red he was walking across a ditch over to Azalea Park. Yeah, me, Red, Scully, we rode around and we dropped off Scully. I brought him back to the apartments and that's where he jumped the ditch, that was the last time I saw him.

Folks, when you go back in your jury room take a look at State's Exhibit No. 1 and State's Exhibit No. 10. Does it look like he walked through any ditch. There's no mud on his shoes. Look at Det. Giglio's shoes when he just walked up to the ditch, and you'll have those in your jury room.

From that initial encounter with police that's where Mr. Chisolm starts crafting his little web of lies. His big web of lies.

You heard Tamekka testify. She said, to the

defendant's question, she said, Haven Oaks, when police come around most people take off. You heard Det. Bistromowitz say that. It was rare to have any information out there. If they had a motto, their motto would be see no evil, hear no evil. But the defendant, he thinks he's smarter than the rest of those folks out there, and he thought that he could outsmart the police, and he thinks that he can outsmart you.

From day one, he started causing himself problems. Day one, how did he even know that the police were out there investigating a homicide. Remember, police don't even know at this time whether it's a murder, whether he got hit by a car, nothing. And he -- the police were at Tamekka's house. He comes over. How does he know what they're doing there, what they're there for? How does he even know that they found Red, how does he know that they're not just looking for him? How does he know that Red's even dead, at that point. Yet, he's coming over there volunteering information about the last time he saw the victim.

Now, you heard from Shaquanda White. She knows the defendant and at one point was good friends with the defendant and his wife, Natalia. What does she have to say? She said around 3:00 o'clock or so Don showed up in his gray Durango, Red was sitting in the front seat. Don got out and went into the apartment, Scully comes out. Don gets back into the driver's seat, Red's still in the passenger seat,

Scully gets in the back seat behind the driver. At that point in time they headed out. She said Scully came back around 4:30, 5:00, somewhere in there. He stayed in bed the next day. That night she was with Siquan Moody watching a movie.

That confirms, just like the defendant said that Red, Scully and the defendant were the last ones to be seen together.

You heard from Shakara Rose. She said that she was in a crowd of people in Haven Oaks, and she wouldn't commit to it, but you heard what she said to the defendant's question. She said, Don, I believe it was you that said something about Red being in a ditch stinking. Don, I believe it was you. And why is that important, because this was after he went missing, yet, before his body is found. There were only two, maybe three people that knew about this case, and that's Scully, Don and maybe Natalia, that's Don's wife. Scully wasn't in this group of people.

And then we get to David White. David White is the person that the defendant has pointed out multiple times that he has an eighth grade education, the person, according to the defendant who was pressured by the police into giving some statement, and what does he say? He came in, and he told you what happened from about 3:00 o'clock on the afternoon of the 12th right on through to Friday and really

past that.

He said about 3:00 o'clock on the afternoon of the 12th, he said he called Don to go to the hospital to go to the hospital to visit his step-daughter who had had the baby. Don picks him up from his brother's house and they leave from there and go to pick up some gumbo seasoning from Don's mom's house. At some point, he breaks out the cocaine and that changes his mind about going to the hospital. They ride around and meet some girl. They stop by the Exxon station and Don takes him home. He also said there was noting wrong with the seat or the seatbelt at that time. A little while later he realizes he's got the change that Don had given him when they stopped at the Exxon station. He calls Don from Jay's phone and a little bit later Don calls back. Hey, you want some more. It was at that point that Don came back over there. When I say, Don, I'm talking about the defendant, Mr. Chisolm. It's at that point the defendant came back over there with Red. Shaquanda and Siquan are outside. That's when the defendant and Red leave with Scully.

And I think Scully told you he had only known the defendant for a little while. He had met him just a little while prior to this.

As soon as they get in the car Don starts talking about someone to rob. Scully says, I'm not dressed for that.

Said don't worry about that, all you got to do is drive.

Folks it was from that point that Scully got into something he had no idea was going to take place on September 13, 2007. And when they got back to Azalea Park, they start making that loop. They start making that loop in Azalea Park. They come around and go around again. When they get about right here where he put that X, he saw a pop -- he heard a pop, he saw a flash. He sees the defendant with the gun, this gun. He hears the victims take his last gasp of air and he slumps over. Never says another word again. Defendant puts the gun down on the console and starts mumbling something about, yeah, that MF-er. Yeah, something about somebody's cousin, whoever they were going to rob. I wish we knew exactly what he said that night. And it's not because Scully didn't hear him. He heard him, he just couldn't comprehend what he was saying in that heated moment after he just witnessed with his own eyes somebody get killed right in front of him. All it sounded to him was a bunch of jumble.

And I thought about this when I was writing my closing argument, if Scully was making up this story, and for some reason trying to pin this on the defendant why would he just come in here and say after he shot the guy, he said, yeah, I shot him because he was selling drugs in Haven Oaks and I told him to quit. Or why didn't he say -- or why didn't he

make up some reason as to why? But that's not what Scully said. Scully said, I could hear him talking, but I couldn't make out what he was saying.

You know, on cross-examination of Scully, the defendant tried to make some big point about whether Scully was looking out the window or whether he was looking right at him. How many times did Scully look at the defendant and say, Don, I saw you shoot the man. I saw you shoot the man. Whether that was peripheral or that was looking dead at him, what difference does that really make? There was no uncertainty. At the end of his testimony, I asked him, I said, do you see the guy that shot Red and he pointed out that man right there and he said, that's the man who shot Red, that's the man who pulled the trigger, that's the man who murdered Craig Canady. A shot perfectly consistent, the angle of trajectory, just like Dr. Presnell said, coming from the front seat of a vehicle.

It was from there that they left that Azalea Park area, and you see the blue line on here. That's the line David White drew. They start from Azalea Park and they leave and they stop right here by the BiLo by Indian Springs. The defendant gets out, says I'm going to dump the body right here. Scully says, no, you can't do that. You can't do that. I know a place out on Clubhouse. So they leave there, they continue out on Clubhouse. They get about a

mile down on Clubhouse where they dump the body on the right side of the road. From there they continue on down to 165, and throws out the victim's ear piece somewhere along the way the defendant calls Siquan Moody from the victim's phone. They get up to the bridge he throws this gun our the window and more importantly the defendant comes up with a story.

Scully didn't make up any story here, but there's one person who did, and that's the defendant. He said, Scully, this is what we'll say. We'll say Red and I dropped you off and we went on back to Azalea Park and Haven Oaks. Sure enough, that's what the defendant told police. And that's what Scully told police. Both of them lied, but why did Scully lie? He told you right there on that stand. Defendant asked him something about being scared of him, and he said, Don, after I saw what you had just done to that man, I was deathly afraid of you. And you were still on the street and I was scared for me and my family. I submit to you, ladies and gentlemen, that's why Scully lied. It was only a couple of days after the defendant was arrested that Scully came forward and told the whole story.

Twice Scully tell police the story that the defendant told him to say. The defendant made a big deal about an eighth grade education and him giving in to peer pressure in a two hour interview. Here's the problem with that, he

never gave in to peer pressure or police pressure. He never gave into police during those two hour interviews. He never gave in to police when his mom came into the interview. There was no pressure, no coercion. You saw the last interview where Scully came in to police, and Det. Walsh said, okay, Mr. White, I talked to your attorney, he says you want to tell us what happened, tell us what happened, and he lays it all out on the line.

The defendant is trying to hide a couple ways. First he tells you in his opening that David White was pressured with these long interviews and then during some of the testimony he was suggest that the police made it up and told -- they made up this whole story and are trying to pin it on him. And then when that wasn't going his way, he introduced, he introduced the affidavit and said, we gave this to David White and that's how David White crafted this story. David White the person with the eighth grade education that he brought out multiple times, crafted some story that's perfectly consistent with all the evidence.

And there's one other problem with that, is that he told them the location of the gun. When you get back in your jury room take a look at the affidavit. This is Defense Exhibit No. 20. See if it says anything about where the gun is on there. It doesn't say, because they didn't even know at the time where the murder weapon was.

Now, somehow after reading that warrant in November and after learning it was a 22 that Scully had come up with some story that made all this work, that had somebody toss the gun in the river for him. Remember, he was incarcerated. So he couldn't have done it. He would have had to have somebody else toss this gun in the river after he learned that it was a 22.

But you hear Ira Parnell, that was the expert from SLED. You heard him say the gun was consistent with being in water for months. Now, he couldn't tell you any specific time, and that's why he told the defendant, look, it could have been in there for a day, it could have been in there for more, but he said it was consistent with being in there for months.

And you'll have State's Exhibit No. 27. Take a look at this picture when you go back there. Does it look like that gun had been in there for a day or eight days. It had been in there for months. Look at the blueing and the finish. This is not a camouflage gun. This gun was all one color. Agent Parnell testified that the blueing had started to come off of this gun. It's not because it had been in the water for one day. It's because it had been there for a period of time consistent with about two months.

And remember, Scully is not the one changing out the seat. Scully is not the one cutting out seatbelts. Scully

is not the one moving to Florida. That's all the defendant's doing.

And one other thing with regard to Scully making up this story, even if you believe the defendant had absolutely nothing to do with it like he claims why would Scully blame this on him. They were friends, according to him. And there has been absolutely no testimony from any witness, not even his sister that testified at the end that there were any problems between Scully and the defendant prior to September 13, 2007, absolutely none.

Remember it was the defendant that stood up here at the beginning and said that he was here to seek justice for all three of them, Scully, Red, and himself. I submit to you, ladies and gentlemen, that is exactly what we are here for today.

Now, let's talk about these phone records for a few minutes. State's Exhibit 33. You heard Sue Johnson from T-Mobile. She got up here and she talked about the defendant's records and cell phone tower information. I'm not going to mislead you. I can't tell you where he was at any particular time. I can't say that any call made at a particular time was from this location or this location or this location. But what am I trying to show with those phone records? What I can tell you from the phone records and what Sue Johnson testified to is that you can tell where

somebody's not. And remember when Det. Bistromowitz got up here and said in that second interview on the 17th when he came in, he said, we stayed around the Haven Oaks Azalea Park area. We stayed around the Haven Oaks Azalea Park area.

Folks, when you're hitting towers over here at 1049 Beach Hill Road and 516 Beach Hill Road, you're not in the Haven Oaks Azalea Park area. So he lied about that. We know he lied about that. Remember the defendant said a few minutes ago science doesn't lie. Science doesn't lie, but he does.

We know that from 2:00 o'clock to 3:50 the defendant was in that Haven Oaks area, but then he starts heading out towards that Beach Hill area, he starts heading out towards that Clubhouse area. Mysteriously enough hitting off the same towers that are on the Clubhouse Road side down there. That happens to be where the body was dumped. That happens to be where David White, Scully, said that they were. Now there some -- is there some bouncing around between the towers? Yeah, there's some bouncing around. Once you get to -- once you get to the calls in the 4:47, 4:48, 4:49 time frame, remember that's when Scully said that they were almost back home. He got home around that time. Well, if he's up in this area -- remember Sue Johnson said the cell phone is going to hit off the strongest signal. So if you're

up in this area here, wouldn't it make sense to be bouncing back on these two towers, the Trolley Alley tower and the 516 Beach Hill Road tower.

The bottom line of those phone records is he was not in that Haven Oaks Azalea Park area on September 13, 2007 at around the time the victim was killed. These phone records don't have any ax to grind or have anybody to reward. They're facts that are recorded down by those phone companies who have absolutely no interest in this case whatsoever.

Now, David White told us that the defendant's phone to Siquan Moody. Why? To make it look like the victim was still alive and that call is on these phone records. If you take a look. At 4:13, 4:13, there's a call from Canady to Sike, 34 seconds. And looks what it's sandwiched between, it's sandwiched between a 50 minute gap in the defendant's records to 3:51 to 4:41, there's absolutely no activity on the defendant's phone. The only call made was on that call that Scully got up there and testified he made that call from Red's phone to make it look like Red was still alive.

Let's look at the rest of those phone records. Move on down. I think in Mr. Chisolm's closing he said something about, nobody knows what he was doing that next day. Well, ladies and gentlemen, look at is phone records again, from 4:54 -- we know Scully was dropped off somewhere in this

time frame in here. From 4:54 to 6:19, again, a huge gap in time when the only activity in the victim's phone and the defendant was the victim's phone being powered off. What do you think he was doing around that hour and 20 minutes or so. Do you think he was riding around cutting out a seat? Think he was riding around cutting out a seatbelt, disposing of that evidence? Getting rid of the victim's phone. That would have been the perfect time to do it. He didn't have time to talk to anybody on the phone he had work to do. And when he gets that done who does he call? All of a sudden he starts calling Florida, he starts calling the army recruiter. He had to get out of there, and all that's indicated right here on these records. Take a look at them when you get back to your jury room.

Remember he's the one that told police that the last call the victim made was to Siquan when he was with us. That was the last call that he made. You can check the phone records. That's what he told them. You can check the phone records.

The defendant thinks he was outsmarting someone and what was he trying to show? To me, that proves without a doubt whatsoever, without any doubt that they were together at 4:13 on the 13th. Otherwise how would he know that he was calling Siquan. How else would he know that. He was either with the victim or he had the victim's phone.

David White, ladies and gentlemen, I submit to you is right on point. That's exactly what happened that night. He dumped the body out and he went and used the victim's phone just like David White said to call Siquan Moody, not to say anything, because you heard Mr. White say Siquan was on the other end just saying, hello, hello, hello. Only to make it appear that the victim was still alive at that time. Part of his web of lies, part of his deception.

When Scully gets dropped off that night he said he got out of the back seat, walked up to the driver's side and looked in. He could see the blood, not on this seat, but on the seat that was destroyed. He could see the blood in this area in here and he demonstrated on the witness stand where he was talking about. And the next day on Friday, he comes back to Scully's again, the defendant comes back over there again. And this time when he comes back he's got this seat cover on his seat, and he says hey, come look here what I've done. He pulls the seat cover up and Scully sees a hole that he had cut right where the blood was.

You heard Det. Zensen talk about the blood on the back of the victim's shirt. And this is it, right here. This is State's Exhibit No. 4. You can see the blood in that picture. Right in this area right here. And she said that just like a towel, a wet towel or something it's going to leave -- it's going to transfer that moisture, and that's

exactly what happened. The victim was sitting right here slumped over. On their way to Clubhouse, he bled out, it ran down the back of his neck, it wicked around his shirt and it got all over the seat. It may have gotten on the seatbelt. In fact, if you look down his shoulder, and it's a little bit clearer in the actual picture, but you can see right through here. If he had on a seatbelt that would have gotten on the seatbelt.

You don't have to be an expert in evidence transfer or forensic science to know what happened here. The victim was in the seat that he took out of this Dodge Durango, there was a blood spot all over the seat, and the defendant in his effort to destroy evidence, to thwart the investigation, he cut out that seat, and he rode around from 5:00 until about 6:19, throwing out that seat all over the place, just like he told David White.

The defendant made a big deal with Mr. Gallardo, he was the one that pulled parts. He was the one that the microphone messed up on and everybody covered their ears when he testified. And the defendant made a big deal about whether he said the left side of the seat or right side of the seat. Folks, if I tell you to go sit on the left side of the car, do you really know what I'm talking about. Oh, yeah, and the defendant admitted to changing out his seat. There is no question what seat we're talking about. This is

it right here. It came out of his Durango. You heard Det. Giglio say that they matched the serial number back to the Dodge Durango at the auto parts place at LKQ. There's no question that he pulled the passenger seat out of his truck. And on the 27th, when they executed that second search warrant, they stopped the defendant, they get him out, they're reading the affidavit on the warrant. And he tells Det. Giglio, I don't need you to read that. Det. Giglio said he just reads it anyway, that's how he does things. So when he gets to the part about the seat and the defendant says, wait a minute, wait, what's that part again.

It was almost a month later when he flagged down police in Haven Oaks and he told them, yeah, by the way I changed out that seat because it had cigarette burns on it and he was going to change out the other one, too.

If you could change out your seat for cosmetic reasons why would you be frantically calling seven junkyards the day after your friend goes missing? Why would you be trying to arrange payment of a seat where you're going to pay the guy back in cocaine or some sort of drugs. And I'm not cigarette smoker but it seems to me that if you're getting burn holes to the point that you need to change out your seat, wouldn't it be on the bottom of the seat and not the back?

Remember, it was Richard Johns and George Gallardo who

said he was looking for the back of the seat, not the bottom. He had to get the whole thing because they wouldn't separate it. They would only sell the whole seat. Meanwhile, he's also asking for the seatbelt and the trim.

And you heard Shaquanda White and David White say that there was absolutely nothing wrong with that seat or the seatbelt. And David White said there wasn't anything wrong until after the murder.

Remember in opening I said, ask yourself if that person's story makes sense. It is adding up, it is corroborated by other evidence, other testimony. And what about that seatbelt. He lied about that too. He said the seatbelt was damaged when he got the car from his sister. Yet, you heard the expert say that there was absolutely nothing wrong with the seatbelt except for the strap being cut. And look here where it's cut.

Let's talk about his sister for a minute, the last witness you heard from this morning. She said, what did she say, something about she had an abusive relationship, she had to cut the seatbelt out so that she could jump out the car on a moments notice. And she just took a knife and cut it and it wrapped up around the spool.

Look at State's Exhibit 9. You heard Mr. Carriero testify, the expert from Hoover Dodge. You just don't cut the seatbelt. Look where it's cut. There's the spool right

there. It's cut five, six inches from the spool. Who cut the seatbelt? The defendant had to remove this trim and cut way down in here. His sister didn't cut that seatbelt out. He cut that seatbelt out and that's as obvious as I am standing here today.

Why did the defendant do all this? Obvious, too. He had to get rid of the evidence. You heard Det. Zensen testify that they weren't able to get anything -- and I hate to say of value, because they did get some stuff of value, they got the fact that there was blood found in his car, and I'm going to come back to that in just a moment. But she wasn't able to examine that original seat, she wasn't able to examine that original seatbelt. So it's no wonder they didn't find massive blood in the car. And you heard her testify that this wasn't a particularly bloody crime scene. There wasn't blood everywhere. Just right on the back of his shirt. Look he's got a white t-shirt on when you go back there. There's not blood all over his body. There wouldn't have been blood all in that car. There would have been blood right in this area right here where David White said it was.

And talking about the SLED report. It says, Defendant's Exhibit No. 8, he's the one that put this into evidence, and he said that there's a couple of things that -- they said Craig Canady is excluded as a contributor from

these mixtures. Craig Canady is excluded as a possible contributor of DNA on this item.

The problem is, is he couldn't tell you that on Items 26.1 and 26.2, right here where it says blood indicated. He can't be excluded from there. I find it a little bit surprising that they didn't find any DNA in his car. He admitted that the victim was riding in his car. So whether there was any hair follicles or whatever, I'm surprised they didn't find any evidence in his car, but they did find specks of blood so small that they were unable to develop a DNA profile for that had any suitable value. You think it was because they were so small the defendant didn't see those when he was making sure he had all the evidence out of the car, and one more thing about -- if the police were making up this story wouldn't have just said, oh, that was Craig Michael Canady's blood in the car. If they were making this up how easy would it have been for them to say, the victim's blood was in his car.

There's no making up stories here. The only stories that are made up are coming from that defendant right there when he was telling police all this stuff from September 15th until his last statement.

You don't reward murderers for destroying evidence. You don't reward murderers for cutting out the seat and changing out the seat in his car and cutting out the

seatbelt. He doesn't get a hall pass -- he doesn't get a hall pass for lying to the police, and for changing out all this evidence.

Now, folks you heard some testimony that he came in and he was cooperative and all that stuff? Cooperating is when you come in and give truthful information and information that is helpful to the investigation, and all he did was mislead them. He didn't cooperate with this investigation any more than a man in the moon. And when the Sheriff's Office starts turning up the heat what does he do. Takes off to Florida. No forwarding numbers, he doesn't tell Det. Giglio or Det. Walsh or Det. Bistromowitz or any of them, he doesn't tell any of them. Oh, by the way if you need any more information, if you need anything I'll be in Florida. He didn't tell them that. He goes down and gets an apartment in his sister's name.

He got up here at the beginning of this case and he told you he was friends with the victim, friends with Scully. That business about him being friends with the victim, that's offensive. If he was such good friends with the victim why are there no telephone calls, absolutely no telephone calls from September 13th until -- The only contact is one text message saying, hey, your girl was looking for you, you better call her. That's interesting because he wasn't looking for him. He wasn't looking for

him. That was another effort in his little web of lies to try to throw off police, to try to fool the investigation and to try to fool you.

What kind of friend sits around waiting on their missing buddy to call them? What kind of friend puts a gun to the victim's head and pulls the trigger? What kind of friend throws his buddy in the ditch and leaves him there for the buzzards to eat?

They weren't friends. People may have thought they were friends. They weren't friends.

The defendant mentioned something to you about, where's the motive, where's the motive. Well, again, I told you at the outset motive is not an element to murder. Motive is not an element of murder. I do not have to prove motive to you. But motive can be helpful. There is some indication of motive here. You heard Tamekka Williams testify that about a month prior to this the victim started selling drugs in the Haven Oaks area. That was one of those things you probably asked yourself about. About a month prior to this he started selling drugs, and a month later, he's dead at the hands of Mr. Chisolm who was also selling drugs in the Haven Oaks area.

You heard Tom Simonelli tell you that. He was his drug dealer. You think that had something to do with it? You think maybe Mr. Chisolm's business got in the way of his so-

called friendship?

Now, I'd be foolish to get up here and tell you that the victim in this case was some sort of angel. He had his problems. Tamekka Williams said that he was a good person. I never had the opportunity to meet him. Whether he was a good person or the next biggest criminal you can think of, no one deserves to have a gun put to their head and the trigger pulled. Or as they say, two wrongs don't make a right. And whether you approve of his lifestyle or not, he's got family seated on the second row, and he's not the one on trial today. That man is the one on trial today.

We know that Scully and the defendant were the last people with the victim. The three of them left and only two of them came back. There's no question about that.

You've heard two stories in this case. You've heard David White's story and through the testimony and what he told the officers, you've heard the defendant's story. Again, ask yourself, which one of those stories makes sense? Which one of those stories is corroborated by the evidence, which one of those stories is corroborated by other testimony in the case?

The defendant planned on a lot of things in this case. He planned on him looking at the cell phone records. He planned on them looking to see whether he had made any contact with Red after he had seen him. He planned on all

sorts of things but he didn't plan on David White coming forward. He didn't plan on that.

When you get your verdict form there will be two possible verdicts in this case, guilty or not guilty, but there's only one verdict that speaks the truth. That's what verdict means, to speak the truth. He came forward early on and he tried to fool police. He didn't fool them. Now, he's coming forward now trying to fool you. Don't let him fool you. Don't let him fool you.

Find the defendant guilty of the murder of Craig Canady on September 13, 2007, and give him the justice that he came in there on the 13th and asked for, justice for him and justice for the victim in the case.

Thank you.

THE COURT: Thank you, Mr. Hilton.

Ladies and gentlemen, the first break that we talked about, just stand up where you are. Seriously just stand a minute.

My next question is going to be, it's going to take me probably 20 to 25 minutes to deliver the charge to you. Anybody need to take a comfort break? That will be great. Let me tell you how we're going to proceed. In a moment I'm going to ask you to step to your jury room, take your comfort break. We will be at ease until you guys have taken your comfort break that you need. And then you'll just

knock on the door and then at that point I will deliver the charge, the instruction on the law to you, because I've not done that you are not in a position to deliberate. So please be mindful that you are not to discuss this matter or allow anyone to discuss it with you.

You take your comfort break. Just knock on the door when you all are ready to return. Thank you. Just step to your jury room.

(Jury out at 11:40 a.m.)

THE COURT: All right. We will be at ease until we hear from the jury, but please don't anybody go far, but do take a comfort break if you need to.

Mr. Chisolm, do take a comfort break if you need to, you can do that, but everyone please stay close so that we can get right back started when the jury let's us know they're ready.

(Court in recess for short break at 11:41 a.m.)

(Court in session after short break at 11:45 a.m.)

THE COURT: Thank you and please be seated.

We are still at ease y'all. We didn't want to make the jury wait all day, so I figured I'd come wait on them.

(Pause.)

(Jury in at 11:55 a.m.)

THE COURT: Ladies and gentlemen, you have now heard the evidence and received the exhibits and heard the arguments

of both sides. It is now my duty to charge or instruct you on the law applicable to this matter.

The indictment in this case charges the defendant, Mr. Chisolm, with murder.

I remind you that the fact that he was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence as guilt in this case, nor, does it create any presumption or inference of guilt.

The indictment is simply the formal written instrument which contains the charge made against Mr. Chisolm. It is the formal document by which this case is brought into this court.

Ladies and gentlemen, the indictment in this case, Indictment 2008-18-0009, states in part, that the defendant, Donsurvi Chisolm, did in Dorchester County on or about September 13, 2007, with malice aforethought, kill one Craig Michael Canady, Jr., by means of shooting the said victim, and the victim did die as a proximate result thereof. This being in violation of Section 16-3-10 of the South Carolina Code of Law as Amended, and the Common Law of South Carolina.

Ladies and gentlemen, the defendant, Mr. Donsurvi Chisolm, has pled not guilty to this indictment and that plea puts the burden on the state to prove the defendant

guilty. To prove Mr. Chisolm guilty. When I say defendant, I mean Mr. Chisolm.

A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law, that the defendant in a criminal case no matter what the seriousness of the charge will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocense does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocense of like a robe of righteousness placed about the shoulders of the defendant, which remains with him until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocense is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

What then is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The state has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases the state's proof must be more powerful than that, it must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility the defendant is not guilty you must give the defendant the benefit of the doubt and find him not guilty.

I remind you that during this trial you and I have had certain duties to perform. As a trial judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the

evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record, in this case, during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand and any exhibits which have been made a part of the record of this case.

Ladies and gentlemen, I have the additional duty to charge you the law applicable to this case. As the presiding judge I am the sole judge of the law in this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any ideas as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your pre-conceived idea because you are sworn to accept and to apply the law exactly as I state it to you.

Now, in every case tried in this Court before a jury, the jury becomes the sole and the exclusive judge of the facts in the case. A trial judge cannot intimate, state, comment or make any statement to a trial jury about the facts in a case since you the jury are the sole judges of the facts in this case.

Ladies and gentlemen, if I have said or done anything that you believe might be a comment on the facts in my task

in ruling on the admissibility of evidence or otherwise, or anything that I say now during this instruction to you, that I have any opinions regarding the facts in this case, if I do anything which you infer is a comment on the facts I ask you to please disregard that, because ladies and gentlemen, I have no opinion regarding these facts. That's a matter solely, solely for you to determine.

Ladies and gentlemen, as jurors it is your duty to determine the effect, the value, the weight and the truth of the evidence presented during this trial.

Ladies and gentlemen, during the course of the trial, there are two types of evidence which are generally presented, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact. Such as an eye-witness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

Let's go over a couple of examples. Ladies and gentlemen, it's February. It's cold, snow is forecast. You

walk outside, you look up, you look around, and it's snowing. White stuff is falling from the sky. That is eye-witness testimony direct evidence, direct evidence that it is snowing. You see it snowing. If you testified, you said, I saw it snowing. I saw it. This is what it looked like, this is what it felt like. Ladies and gentlemen, that is direct evidence that it is snowing. You saw it snow.

Ladies and gentlemen, let's go to another example. It's February. It's cold. Snow is forecast. You look outside at 11:00 o'clock before you turn in for the evening, and it's still cold and you look at your poor, little, pitiful grass and it's brown and crunchy. And then you go to bed. You wake up in the morning the sun is shining, but all over what was that brown crunchy grass is now white snow. It's everywhere. It's all over your neighborhood. It's everywhere you can see. Even though it isn't snowing at that moment, it's February and it's cold and it's forecast and although it wasn't there when you went to bed, it's everywhere when you wake up. Those are proof of collateral facts from which you may infer that it snowed overnight. That it snowed overnight. Circumstantial evidence that it snowed overnight.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence nor is a greater degree required of

circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case and after weighing all the evidence in the case, if you are not convinced of the guilt of the defendant beyond a reasonable doubt you must find the defendant not guilty.

Now, necessarily, you must determine the credibility, which simply means the believability of the witnesses who have testified in this case, it becomes your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of it's truth. In determining the believability of witnesses who have testified in this case. You may believe one witness as opposed to several witnesses or several witnesses over one witness. You may believe a part of a witnesses testimony and reject the remaining part of the testimony of the same witness. You may believe the testimony of a witness in its entirety or you may reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, any bias or prejudice, or other motives in this case, and you may also consider the appearance and the manner of the witness while on the witness stand.

Now, ladies and gentlemen in this case you have heard testimony from one who was deemed to be an expert witness. Our rules of evidence ordinarily do not permit witnesses to testify regarding their opinions or conclusions, but there

is an exception to this rule and that exist for witnesses who are expert witnesses. A witness who by virtue of their education and experience, profession or training or knowledge has become an expert in some art or science or profession or calling and they may state an opinion as to relevant and material matters in which the witness claimed to be an expert, and they may also state the reasons for their opinions. You should consider any expert opinion received in evidence in this case and like any other evidence you give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely. An expert witness's testimony is to be no greater weight than other witness's testimony simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

Ladies and gentlemen, I instruct you and I emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the issue of whether he is guilty or not guilty. It must not be considered by you in any manner whatsoever. A defendant has

the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever to the fact that the defendant, in this case, did not testify. The fact that Mr. Chisolm did not testify should not even be discussed in the jury room.

The burden of proof, as I have stated it to you is and remains on the state. Mr. Chisolm is not required to prove his is not guilty. The burden of proof is and remains on the state to prove guilt beyond a reasonable doubt.

Now, ladies and gentlemen, in order to establish criminal liability criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purpose or intent, knowledge. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determine by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain to determine what that person had in mind. So the law says that criminal intent may be inferred, may be inferred from the circumstances show to have existed.

This is how you make a determination of whether or not the element requiring intent was present. It is not

necessary to establish intent by direct evidence or positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state. A conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or failure to act or may arise from negligence, recklessness, indifference to duty or to circumstances considered by the law to be the equivalent of criminal intent.

Now, ladies and gentlemen, a -- the defendant in this case, Mr. Chisolm, is charged with murder. The state must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Now, the defendant -- the elements of murder, again, are the defendant killed another person with malice aforethought. This is what the state must prove beyond a reasonable doubt.

Ladies and gentlemen, what is malice? What is malice? Malice is an element of intent. It is hatred, ill will, or hostility towards another person. Malice is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought

does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is, either by direct evidence or inference from facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill will for another. Or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts in preparation going to show that the deed was in the defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise with the deed is done with a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples, examples, of instruments which may be deadly weapons. A shotgun, a rifle, a dirk, a dagger, a knife, a

slingshot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail may be deadly weapons. A gun may be a deadly weapon even if it is not operating.

Now, ladies and gentlemen, I further remind you, as I did in the beginning, ladies and gentlemen, that Mr. Chisolm, as you now well know, represented himself throughout this case, which he is entitled to do. It is his right, and ladies and gentlemen, you certainly would, in no way, hold it again him that he chose to represent himself, because that is his right.

Now, ladies and gentlemen, in a moment we are going to go over the verdict form. I'm going to come down there to do that.

There are two things that I'm going to tell you before we go over the verdict form.

First of all there are two possible verdict and they're put on this piece of paper. Ladies and gentlemen, you are to take no hidden meaning, no comment by the Court by the virtue by the order in which these two possible verdicts have been placed on this piece of paper. Guess what? I could have just as legitimately put them in the other order. It's just reality. People put things on paper, one's got to be first and then the other's got to be second. Please take no hidden meaning from the order in which these two possible verdicts have been placed on this paper.

Secondly, your verdict must be unanimous. It must be unanimous. That means that this is the verdict of each and every one of you. This is not the verdict of the majority of you or any one of you, but this must be the verdict to each and every one of you.

That should be a hint to the two of you. Ladies and gentlemen, on this next occasion my alternates, y'all stick with me, okay.

Ladies and gentlemen, we're now going to go over the verdict form with you. There's a caption here and this says verdict form. This says, as to the indictment alleging murder, we the jury unanimously -- my children think I'm a nag -- but the jury -- we the jury unanimously find the defendant -- and there are two possible verdicts. Which ever is the unanimous verdict of this jury, just circle one. There are two possible verdicts, not guilty and guilty. Which ever is the unanimous of this jury you will simply circle that verdict.

Now, then says stop and end your deliberations, please sign and date.

You know who you, Mr. Brown, you will sign as the presiding juror. The date for your reference is the 19th of September 2011.

Now, ladies and gentlemen, in just a moment I'm going to be sending you to your jury room with this instruction.

Do not discuss this matter or allow anyone to discuss it with you.

What you might say? What? You've been telling us this is when we're going to begin our deliberations. So I'm going to hasten to tell you what's going to happen when you step to your jury room on this occasion. I'm going to turn to these parties and I'm going to ask them have I given the jury all the law that they may need for their deliberations and have I stated it for them correctly.

Now, ladies and gentlemen, sometime, sometimes even though it is unintended, sometimes something just comes out wrong. And sometimes I need to bring jurors back out and correct something that's I've told them that is not correct. I ask you in advance, if I need to bring you back out for that reason, please allow me to correct my error in your minds. Sometimes I need to bring jurors back out because I have failed to give a jury an instruction that they may need for their deliberations. So in the event that I need to bring you back out for that reason, I ask you in advance, please don't consider that instruction with any emphasis. Please note that this is my chance to get this right, to give you all the law that you need for your deliberations and to state it for you correctly.

Now, in the event that I do not need to bring you back out, you will be brought the verdict form and the exhibits

and your note pads and specific instruction to begin your deliberations.

Now, Mr. Taylor, who probably the person who will be bringing you these items, and he and I have been doing this for a very long time. You might be the first jury that he specifically doesn't tell begin your deliberations, but you will not have the verdict form and the exhibits and note pads unless you are ready to begin your deliberations.

Just a word or two about your notes. Your notes are for you. They are for you to refresh your recollection to allow you to deliberate. They are not to be shown to anyone else and they certainly are not to be held up and pointed to as a reason why you might be correct and someone else not correct. They are not to be given any undue emphasis. They are for you and for your eyes only to allow you to refresh your recollections for your deliberations.

Now, ladies and gentlemen, I need to tell you that when you begin your deliberations, if you need to take a break for any reason, somebody needs to take a comfort break, somebody needs to go smoke, whatever the reason might be, stop your deliberations because all 12 of you must be together for you to deliberations. So if you need to take a break, stop your deliberations. Take your break. And then you just reconvene your deliberations when all 12 of you are together again. Just remember that all 12 of you must be

present for you to deliberate.

Now, ladies and gentlemen, I'm going to conclude my comments to you with this. The word verdict comes from the Latin phrase veredicto, which means to speak the truth. To speak the truth. Ladies and gentlemen that is now your task. To speak the truth.

Please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you. Except for my alternates. Y'all stay right here with me.

(Jury out at 12:28 p.m.)

THE COURT: All right. Ms. Harrison and Ms. Marshall. You are my alternates. I've imposed on so much of your time, I'm going to ask you for just a tiny bit more, and let me tell you why. I believe that if you will give me 15 minutes of your time, once the jury begins deliberations, and that will be very shortly, if you'll do that for me -- here's -- if something should happen to one of our jurors as deliberations begin, and that does happen from time to time. Should something happen I believe I can stop the deliberations seat one of you and then begin the deliberations again and save the trial. Given the duration that we've been at this now, you can understand why I'm going to ask you for a little bit more time because I would love to be able to save the trial not have to begin anew. So once our jury has begun it's deliberations, they'll start

the 15 minutes clock going. I don't mind sharing with you, also, we've ordered lunch for the jury. We'd love to have you stay and have lunch. You've been so good, giving us so much of your time. We'd love to have you stay and have lunch with us, as well, but I am going to ask you for the additional 15 minutes. What's going to happen in just a moment is these folks are going to take you to another jury room so that you'll stay separate from the jury but you'll be available if something should happen in that initial 15 minutes. And then I want to just speak to you and tell you thank you so much. So when your 15 minutes is up I'm going to come looking for you just to say thank you before you leave it. So if you'll just go they're going to take you somewhere else. Leave those notebooks right there. Wonderful. Thank you so much.

(Alternates exit courtroom at 12:30 p.m.)

THE COURT: All right. Anything from the state?

MR. HILTON: Nothing.

THE COURT: With regard to charge? All right.

From the defense?

MR. CHISOLM: I have nothing, Your Honor.

THE COURT: Very well. Here's what I'm going to ask you all to do for me. I want you to look at the exhibits, actually, look at what's going back to the jury. I want you to please look at the verdict form one more time so that you

appropriate. I've got their notes here. I'll keep them here unless they're needed.

Without further ado, you all take the exhibits and the verdict form back to the jury. Please take them some gloves so that they can have them in the event they wish to have them as they handle the evidence.

We will be at recess.

Oh, there is one final thing, and I think that I did it, that I put in as a Court's Exhibit, Mr. Chisolm's voir dire questions. I did? I just wanted to be sure I did that because I found my copy. I wanted to be sure I did that.

We'll be at recess.

(Evidence and verdict for to jury at 12:40 p.m.)

(Court in recess awaiting jury at 12:40 p.m.)

(Court in session for verdict at 2:16 p.m.)

THE COURT: Thank you. Please be seated.

Where is Mr. Chisolm?

THE BAILIFF: He's on the way.

THE COURT: Okay. Thanks.

All right. It is my understanding that the jury has reached its verdict. Anything before we bring the jury out; from the state.

MR. HILTON: Nothing from the state.

THE COURT: From the defense?

MR. CHISOLM: Nothing from the defense.

THE COURT: All right.

Ladies and gentlemen in our audience, I just want to make a couple of preliminary remarks and I know that we have members of the victim's family. We also have members of Mr. Chisolm's family who have been present throughout. I don't, obviously, at this point, I do not know what the verdict of the jury is. Irrespective of what it is, though, it is -- it is important that you maintain your composure. This jury is entitled to that. They've worked very long and very hard. The must, of course, make their decision free from any compassion or caprice. They must do that based on the facts and the law. Therefore, they are entitled for the courtroom to maintain composure. If you have any concerns, and I certainly can understand if you would, given the nature of a case such as this, I invite you to take your leave now, because you must maintain your composure. I say that for this jury.

I'm going to give you a moment now and if you believe that you will not be able to maintain your composure irrespective of what the verdict may be. I want you to take your leave now.

(No one leaves courtroom.)

Very well. All right. Let's have the jury.

(Jury in with verdict at 2:18 p.m.)

THE COURT: All right. Mr. Brown, if the jury has

reached its verdict if you'll please pass it to Ms. Salisbury, she will pass it to the Court. Jury has reached its verdict then, it that correct?

JURY FOREMAN: (Nods head in the affirmative.)

THE COURT: And you're nodding yes.

JURY FOREMAN: Yes. Yes, Your Honor.

THE COURT: All right. I find that the verdict is in good form.

Madam Clerk, you may publish it.

THE CLERK: In the matter of State of South Carolina, County of Dorchester verses Donsurvi Chisolm, Indictment 2008-GS-18-00009. As to the indictment alleging murder, we the jury unanimously find the defendant guilty. Signed by presiding juror, Joseph Brown.

THE COURT: Today's date?

THE CLERK: September 19, 2011.

THE COURT: Ladies and gentlemen, if this was your verdict in your jury room and it remains your verdict here in the courtroom, please indicate by raising your right hand. Let me indicate that all our jurors have their right hands raised. And you may put them down.

All right. Anything before we dismiss the jury; from the state?

MR. HILTON: Nothing from the state.

THE COURT: From the defense?

here. I've not had an opportunity, of course, to hear from them. I have all the time in the world for them, if they wish to speak. I'm delighted to hear from them.

MR. HILTON: You want to do that now?

THE COURT: I think so.

I guess I'll ask at this point if there are additional motions at this point?

MR. CHISOLM: I have nothing additional.

THE COURT: Okay. Very well.

MR. CANADY: May I address the Court?

THE COURT: Yes, sir. All I need for you to do is identify yourself for our record.

MR. CANADY: Craig Canady, Sr.

THE COURT: Oh, yes.

MR. CANADY: Craig's my son. My family has been through a lot. Tormented. We've watched this trial. It hurts. To stand before the Court and smile and gesture, no bit of remorse. That doesn't make us proud at all. Two lives have been lost, but at this time, we're just going to leave it in the Lord's hands, and that's basically all I want to say. Put my mother, grandmother, aunts, cousins, through a lot of turmoil, anguish. I'm just a better person right now, because otherwise, I don't think I could stand before you and say something calmly. So I'm going to leave it at that.

THE COURT: Mr. Canady, I thank you so much, and I know

that sitting through these trials, sitting through this trial, the death of your son is -- must be unspeakable pain. So I've certainly been aware that you all have been here every moment. Thank you for that, sir, and thank you for the decorum that your family has maintained throughout this trial for some very painful things to have to see, to have to relive, and I'm certainly mindful of that, as well. Your family is obviously, has great grace, and I certainly thank you for being here.

MR. CANADY: Thank you.

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

MR. HILTON: Anybody else?

I think that would be all from the family, Your Honor.

THE COURT: Very well. Very well. All right.

Yes, Mr. Chisolm?

MR. CHISOLM: Your Honor, I'd just like to say I disagree with the verdict. I do not concede guilt in this case.

THE COURT: Very well. All right.

What is his record, Mr. Hilton?

MR. HILTON: He has a record, Your Honor, back -- while he was in the military, looks like January 24, 2005, he received a -- a military adjudication, I guess, for wrongful use of cocaine, and then he had a carrying a concealed weapon. I believe that was in 1999, July of 1999.

THE COURT: Very well. All right.

Anything further from anyone before I pass sentence?

Very well. Hearing nothing.

Mr. Chisolm, for the crime of murder, I commit you to the State Department of Corrections for the balance of your life.

Very well. That would conclude these matters.

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

THE COURT: Yes.

MR. HILTON: If we're concluded in this matter, I'm going to escort the family back over to our office at this time, and they will be in there for a little while.

THE COURT: Certainly.

MR. HILTON: Thank you.

(This proceeding was concluded at 2:34 p.m.)

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-008989

ARREST WARRANT NUMBER

K308513

Arrested: Nov 13, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 1-14-08

Foreperson of Grand Jury
Date: January 14, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-0009

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

January 14, 2008 TERM

THE STATE
vs.

Donsurvi Chislom

Indictment for

MURDER

SC Code: **16-03-10 / 16-03-20**
Class: **FEL-X**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2008 JAN 15 AM 8:32
CLERK OF COURT
DORCHESTER COUNTY

690

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2008GS18-0009

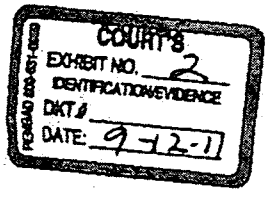
At a Court of General Sessions, convened on January 14, 2008 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Donsurvi Chislom, did in Dorchester County on or about September 13, 2007, with malice aforethought, kill one Craig Michael Canaday, Jr., by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

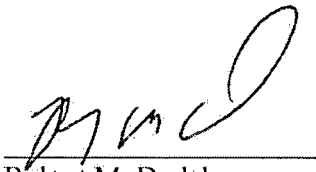
Donald Sorenson, Solicitor



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 15th, 2015



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT

Appellate Case No. 2011-200186

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 3

ARGUMENT

1. The court erred by ruling evidence of appellant's prior drug dealing was admissible since it was unduly prejudicial pursuant to Rule 403, SCRE, and the judge erred by ruling it was admissible to prove motive under Rule 404(b), SCRE 4

   Relevant Facts 4
   Discussion 7

2. The court erred by allowing a weapon into evidence since there was not a sufficient nexus to prove the weapon was involved in the murder, and it was therefore highly prejudicial 11

   Relevant Facts 11
   Discussion 14

3. The court erred in failing to suppress the fruits of evidence derived from a search warrant issued on September 27, 2007 for appellant's 2007 Dodge Durango since the search warrant was based on defective information 18

   Relevant Facts 18
   Discussion 20

4. The court erred by refusing to allow the defense to question Detective Zensen about DNA testing performed on a seized firearm, specifically as it pertained to Craig Michael Canady, since the defense had the right to show that the detective's answers were inconsistent in this regard and because the evidence was relevant to the thoroughness and accuracy of the investigation 23

   Relevant Facts 23
   Discussion 26

5. The court erred by allowing appellant to represent himself where the court did not inquire about the nature of the conflicts appellant was having with his attorney, did not warn appellant that a murder conviction here would constitute an aggravating circumstance for the state to seek the death penalty in his other Berkeley county murder case, and was very vague, and not specific about the dangers and disadvantages of self-representation 27

Relevant Facts 27
Discussion 29

CONCLUSION 32

TABLE OF AUTHORITIES

Cases

Faretta v. California, 422 U.S. 806 (1975) 29

State v. Barnes, Op. No. 27322 (filed October 16, 2013) 30, 31

State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990) 9, 10

State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997) 31

State v. Brooks, 341 S.C. 57, 533 S.E.2d 325 (2000) 7, 8

State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012) 20

State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990) 9

State v. Cutro, 332 S.C. 100, 504 S.E.2d 324 (1998) 7

State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010) 15, 16

State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991) 8

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998) 15

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) 7

State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999) 21

State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975) 19, 21

State v. Smith, 300 S.C. 216, 387 S.E.2d 245 (1989) 7

State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992) 10

State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010) 31

State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010) 31

Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) 31

Statutes

S.C. Code §16-3-20 (C)(a)(2) 30

S.C. Code §17-13-140 20

Rules

Rule 401, SCRE 14, 26

Rule 402, SCRE 14, 26

Rule 403, SCRE 4, 7, 15

Rule 404(b), SCRE 4, 5, 7, 8

Constitutional Provisions

U.S. Const. amend XIV 20

U.S. Const. amend. IV 18, 20

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by ruling evidence of appellant's prior drug dealing was admissible since it was unduly prejudicial pursuant to Rule 403, SCRE, and the judge erred by ruling it was admissible to prove motive under Rule 404(b), SCRE?

2.

Whether the court erred by allowing a weapon into evidence since there was not a sufficient nexus to prove the weapon was involved in the murder, and it was therefore highly prejudicial?

3.

Whether the court erred in failing to suppress the fruits of evidence derived from a search warrant issued on September 27, 2007 for appellant's 2007 Dodge Durango since the search warrant was based on defective information?

4.

Whether the court erred by refusing to allow the defense to question Detective Zensen about DNA testing performed on a seized firearm, specifically as it pertained to Craig Michael Canady, since the defense had the right to show that the detective's answers were inconsistent in this regard and because the evidence was relevant to the thoroughness and accuracy of the investigation?

5.

Whether the circuit court erred by allowing appellant to represent himself where the court did not inquire about the nature of the conflicts appellant was having with his attorney, did not warn appellant that a murder conviction would constitute an aggravating

circumstance for the state to seek the death penalty in his other Berkeley County murder case, and was very vague, and not specific about the trial dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for the offense of murder. R. 690. His case was called to trial on September 13, 2011 before the Honorable Diane S. Goodstein, and a jury. Appellant Don-Survi Chisolm represented himself. John Loy was stand-by counsel. Russell Hilton and Matt Austin were the assistant solicitors. R. p. 132.

On September 19, 2011, the jury found appellant guilty. R. p. 686, ll. 10-14. Judge Goodstein sentenced appellant to life imprisonment. R. p. 689, ll. 4-6.

This appeal follows.

ARGUMENT

1.

The court erred by ruling evidence of appellant's prior drug dealing was admissible since it was unduly prejudicial pursuant to Rule 403, SCRE, and the judge erred by ruling it was admissible to prove motive under Rule 404(b), SCRE.

Relevant Facts

Shaquanda White testified that she rode as a front passenger in appellant's gray Dodge Durango approximately one week before September 13, 2007, the date of the murder. R. p. 253, ll. 14-22. She claimed that at that time the front passenger seat was in "normal condition," did not have any major holes nor did it need to be replaced. Shaquanda further testified that she remembered seeing the front passenger seatbelt and that it was "fine." R. p. 253, l. 23 – 254, 1. 17.

Appellant's co-defendant, David White, testified that after the murder, the front passenger seat of appellant's Dodge Durango had "a big spot of blood on it." R. p. 294, l. 6 – 295, l. 10. He claimed that appellant told him several hours after the murder that he was trying to find a new front passenger seat for the Durango. Appellant allegedly showed White where he had cut out a big hole in the passenger seat where the blood spot used to be located. White explained that appellant had put a black and gray seat cover on the seat to hide the hole. R. p. 296, l. 3 – 297, l. 25. White noticed that the front passenger seatbelt was missing and that it had been cut off. R. p. 298, ll. 6-11.

Based on this testimony, the state wished to present evidence that appellant replaced the front passenger seat of his Dodge Durango within days of the murder. Specifically, the state sought to present the testimony of Thomas Simonelli regarding an agreement between

Simonelli and appellant in which Simonelli would purchase a new car seat from LKQ Automotive on a credit card if appellant would pay Simonelli twice the amount in cocaine. The state also planned to have Simonelli testify that he knew appellant because appellant was Simonelli's "cocaine supplier." R. p. 382, ll. 2-24.

The state argued Simonelli's testimony was admissible under Rule 404(b) to show motive. The state noted that Tamekka Williams previously testified that the decedent had started selling drugs about a month prior to the murder. The solicitor argued, "I need to establish at this point . . . [appellant] also sold drugs in that area to show motive as to why he would want to take out the victim . . ." R. p. 384, l. 23 – 385, l. 10; See R. p. 241, l. 20 – 242, l. 8. The solicitor stated, "It's the state's position that that would be quite a good reason for Mr. Chisolm to want to take out a fellow drug dealer that's cutting into his territory." Id.

The state also argued that the testimony was more probative than prejudicial because appellant told law enforcement that he replaced the seat because it had cigarette burns on it and because it is unusual that a person who wants to replace a car seat would do so when he could not afford to do it with cash and was forced to make a third-party purchase involving cocaine the day after a murder. R. p. 384, ll. 3-22; R. p. 386, l. 10 – 387, l. 13.

Appellant objected to the presentation of Simonelli's testimony regarding allegations that he sold Simonelli drugs and that there was an agreement to trade cocaine for the purchase of a car seat. Appellant also objected to the state's theory of motive. He argued, "That is pure speculation and is highly prejudicial. It's remote in time, it's not res gestae. It's not subject of conviction, it's purely unrelated and unsubstantiated conjecture." R. p. 385, ll. 11-14. Appellant noted that Tamekka Williams, who previously testified that the decedent sold drugs, never mentioned that appellant and the decedent had a conflict, nor was there

any previous testimony indicating appellant sold drugs. Instead, all the state had was testimony from Simonelli that a trade was going to take place, but never did because the credit card was declined. R. p. 385, ll. 15-23; See R. p. 241, l. 20 – 242, l. 8. Appellant also stated, "I just think it's highly prejudicial towards me. I've never been arrested for any drug charges. There's no evidence of ill will between me and [the decedent]. Other than this accusation there's nothing historically to show any problems between us. No one has testified that there was a war between us in drug competition. Nothing of that nature, Your Honor. It's just pure speculation . . ." R. p. 388, ll. 17-24.

The court held Simonelli's testimony was admissible. The court stated that the testimony regarding the purchase of the seat through payment by cocaine was relevant to show appellant replaced the seat in his vehicle and to show motive under SCRE 404(b). Additionally, the court held "the probative value far exceeds the prejudicial effect" to appellant because the testimony regarding cocaine is not similar to the alleged offense. Specifically, the testimony does not involve an act of physical violence which would be too similar to the allegations in the case. R. p. 388, l. 25 – 390, l. 20.

Thomas Simonelli ultimately testified that he "used to have a drug problem" and that appellant sold him drugs. R. p. 411, ll. 21-24. Appellant subsequently objected based on the same grounds as raised before and the court overruled his objection. R. p. 412, ll. 1-4. Simonelli also testified that on September 14, 2007, appellant called him in reference to a car seat. Appellant allegedly asked Simonelli if he would buy a seat from LKQ, a junk yard, on a credit card in exchange for cocaine. The credit card was ultimately declined and thus the purchase never took place. R. p. 412, l. 6 – 414, l. 4.

The state discussed its theory of appellant's motive for the murder during its closing argument. The solicitor suggested that appellant killed the decedent because the decedent started selling drugs in the area about a month before his death, and his actions were interfering with appellant's own drug dealing business. R. p. 663, l. 11 – 664, l. 1.

Discussion

The circuit court erred in admitting testimony regarding appellant's alleged prior drug dealing and an alleged trade involving the purchase of a car seat in exchange for cocaine since it was remote in time, irrelevant to the murder, failed to establish any logical motive based on the evidence presented, and its probative value was substantially outweighed by unfair prejudice to appellant.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." SCRE Rule 404(b); See State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). To be admissible, alleged prior bad acts that are not the subject of conviction must be proved by clear and convincing evidence. State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998); State v. Smith, 300 S.C. 216, 218-219, 387 S.E.2d 245, 247 (1989). Additionally, the record must support a logical relevance between the prior bad act and the crime for which the defendant is accused. State v. Brooks, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000).

"Further, even though the evidence falls within a Lyle exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." SCRE Rule 403; See State v. Garner, 304 S.C. 220, 221-222,

403 S.E.2d 631, 632 (1991). "The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result will generally turn on the facts of each case." Brooks, 341 S.C. at 62, 533 S.E.2d at 328.

Simonelli's testimony that appellant previously sold him drugs lacked any logical relevance to the murder for which appellant was accused. See State v. Brooks, 341 S.C. at 61, 533 S.E.2d at 327. The connection was simply not there. Besides Simonelli's testimony that appellant sold him drugs, the only other evidence produced at trial that contributed to the state's farfetched alleged motive was the testimony of Tamekka Williams that the decedent began selling drugs about a month before his death. See R. p. 241, l. 20 – 242, l. 8; See also R. p. 411, l. 21 – 414, l. 4. As appellant argued at trial, "it's purely unrelated and unsubstantiated conjecture." R. p. 385, ll. 11-14. There was no evidence of a conflict between appellant and the decedent over alleged drug dealing nor was there any evidence of a competition between the two. White, the only witness to the alleged murder, testified that there was no arguing between appellant and the decedent and that he did not know why appellant allegedly shot the decedent. R. p. 300, ll. 3-5.

There was nothing in the record to support the inference that the decedent and appellant were involved in competing drug dealing businesses. Therefore, Simonelli's testimony should not have been admitted under Rule 404(b) to support the state's farfetched theory of motive.

Not only was there no logical relevance between appellant's alleged prior drug dealing and the murder for which appellant was tried, but any probative value of the testimony regarding appellant's alleged prior drug dealing was substantially outweighed by the danger of unfair prejudice to appellant. Appellant was prejudiced because such

testimony was destructive to his character and hence his credibility. While appellant did not testify at trial, he made various statements to law enforcement that were presented to the jury, such as he purchased a new front passenger seat for his Durango because of burn holes from cigarettes and that the seatbelt was missing when he had purchased the vehicle from his brother and sister. See R. p. 428, l. 19 – 429, l. 4. Thus, appellant's credibility was an important issue in the case. The trial court's error in admitting evidence of appellant's prior drug dealing cannot be found harmless due to the overwhelming prejudice to appellant.

In State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990), the South Carolina Supreme Court held prejudice to Coleman from the admission of evidence that he was a social user of cocaine outweighed any probative value to show Coleman's motive or state of mind at the time of the murder. Despite evidence Coleman was "wired" on the morning of the murder, the court concluded there was no evidence that Coleman's condition was the result of cocaine use nor was there any evidence in the record to support the inference that the victim and Coleman were involved in a drug transaction. Instead, the court held the only function of this evidence was to demonstrate Coleman's bad character and thus it granted him a new trial. Id. at 60, 389 S.E.2d at 660.

In State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990), the South Carolina Supreme Court held evidence of Bolden's alleged crack cocaine use in a hotel shortly before the hotel was robbed was prejudicial error when its only function was to demonstrate the defendant's bad character. The court stated "there is nothing in the record to indicate a logical relevance between use of crack cocaine during the night before the robbery and the robbery which occurred at 6:10 am the following day." Id. at

43, 398 S.E.2d at 494-495. The court further held that even if the testimony was relevant, its probative value was clearly outweighed by its unfair prejudice and thus remanded Bolden's case for a new trial. Id. at 43-44, 398 S.E.2d at 495.

In State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992), the South Carolina Supreme Court held evidence of Smith's prior drug use, unrelated to the murder and armed robbery, should have been excluded. Despite considerable evidence of cocaine use during the actual murder and armed robbery, the court held Smith's *prior* cocaine use was highly prejudicial and "so destructive to [Smith's] character, hence her credibility, that it cannot be held harmless error or cumulative." The Supreme Court ultimately overturned Smith's convictions and death sentence and remanded the case for a new trial.

The facts of appellant's case are similar to the facts of the above cited cases. Evidence of appellant's alleged *prior* drug dealing was highly prejudicial, failed to establish any logical motive based on the evidence presented, and was extremely destructive to appellant's character and credibility. This Court should thus find harmful error and remand the case for a new trial.

2.

The court erred by allowing a weapon into evidence since there was not a sufficient nexus to prove the weapon was involved in the murder, and it was therefore highly prejudicial.

Relevant Facts

David White, appellant's co-defendant, testified that he saw the gun appellant allegedly used to shoot the decedent. White testified, "It was a twenty-two, a twenty-two long. I know what a twenty-two long look like. It was a twenty-two long, long on the muzzle." R. p. 283, ll. 23-25. White provided no further details regarding the appearance or characteristics of the weapon. When presented with a gun identified as State's Exhibit No. 14, White stated, "That *looks like* the gun [appellant] shot [the decedent] with." R. p. 284, ll. 17-18.

Before appellant drove White home on the night of the murder, White testified appellant stopped at Bacon Bridge Road and "tossed the gun out over the bridge." R. p. 289, ll. 18-23; R. p. 293, ll. 1-9. White explained that the area where the alleged murder weapon was disposed of was a local fishing area where he had fished before. White admitted that it's the closest fishing hole to his home. R. p. 338, ll. 1-7; R. p. 339, ll. 5-12.

White confessed under cross-examination that after leading law enforcement to "the alleged but never proven murder weapon" his charge was reduced and he was immediately given a lower bond. R. p. 321, ll. 13-20.

Allison Greer of the Dorchester County Sheriff's Office testified that the sheriff's office learned of the location of the alleged murder weapon on November 16, 2007 when David White came forward. R. p. 429, ll. 16-21. Greer was a member of the "dive team" and was "requested to dive the area on Bacon's Bridge Road where the Ashley River

crosses over Bacon's Bridge." R. p. 429, l. 22 – 430, l. 7. On the first day of the search, the dive team recovered a long gun that they determined had no connection to this case. Two days later, however, the dive team located and recovered a twenty-two caliber Browning Buck Mark semi-automatic pistol. R. p. 430, l. 25 – 431, l. 4. When presented with a firearm identified as State's Exhibit No. 14, Greer testified, "That it *appears to be* the same weapon that we located." R. p. 433, ll. 14-18.

The state subsequently offered State's Exhibit No. 14 into evidence, but appellant objected on grounds of relevance, lack of foundation, and improper chain of custody. R. p. 433, l. 22 – 434, l. 4; R. p. 436, ll. 1-6. In response, the state argued that the gun was tied to the crime through the testimony of the co-defendant and that it was found in the water at the location where the co-defendant said the gun was located. The state also noted that Greer testified that the gun appeared to be the gun the dive team pulled out of the water. The state concluded that the gun was relevant and that the state laid proper foundation for the gun to be admitted into evidence. The state also argued that the gun was a non-fungible item and thus, under current case law, no chain of custody is required "as long as the witness says this is the gun that is in the same appearance and condition it was the date that it was recovered." R. p. 435, ll. 20-25.

Appellant argued that David White was "high on cocaine, freaked out, he was in a dark car," thus implying White was not reliable in his identification of the alleged murder weapon and thus that the gun was not relevant to the case. Appellant also pointed out that law enforcement found another gun submerged in water in the same area. R. p. 436, ll. 8-10. As far as chain of custody, appellant argued law enforcement did not follow "proper procedure" and noted they failed to record the weapon's serial number or identify a marked,

signed evidence bag indicating who had contact with and possession of the gun. R. p. 436, ll. 1-6.

The court ruled it needed more foundation and sustained appellant's objection. R. p. 436, l. 13 – 437, l. 2.

Greer then testified that she was present when the firearm was recovered from the river and placed in a cooler along with some of the water from the river. Greer explained that a serial number from the weapon could not be obtained at that time because the weapon could not be removed from the water. If removed from the water, Greer stated, the firearm would begin to oxidize and rust and interfere with SLED's examination. Greer concluded that the gun removed from the water and firearm identified as State's Exhibit No. 14 both had gold triggers and the handle grips appeared to be the same shape. R. p. 437, l. 23 – 439, l. 1. Greer also testified that the gun recovered from the water did not have a magazine and that the weapon identified as State's Exhibit No. 14 also did not have a magazine. R. p. 440, ll. 19-25.

The weapon was ultimately admitted into evidence during the testimony of Detective Zensen of the Dorchester County Sheriff's Office. Appellant renewed his objection at the proper time. R. p. 475, ll. 18-23. Zensen testified that she took possession of the weapon immediately after it was recovered from the water and placed in a Dorchester County cooler. Detective Greer handed Zensen the cooler and then Zensen transported the gun directly to SLED. R. p. 473, l. 10 – 474, l. 25. Zensen identified State's Exhibit No. 14 as the gun recovered from the river. Zensen explained that the weapon had a "very distinctive" green neon sight and a "very distinctive" gold trigger. R. p. 472, l. 25 – 473, l. 9; R. p. 474, ll. 23-25.

Ira Parnell, qualified as an expert in firearms and ballistics without objection, testified that he examined State's Exhibit No. 14, the alleged murder weapon recovered from the Bacon's Bridge area, and State's Exhibit No. 18, the bullet recovered from the decedent's body. R. p. 611, ll. 9-17. Parnell stated that the bullet was "badly damaged" and, as a result, he was unable to determine whether the bullet was or was not fired from the firearm labeled as State's Exhibit No. 14. R. p. 612, l. 21 – 613, l. 9. However, Parnell testified that State's Exhibit No. 14 was "a twenty-two caliber firearm specifically made to fire twenty-two long caliber rifle ammunition" and that the bullet recovered from the decedent's body had "all the physical characteristics and the weight consistent with being a twenty-two long rifle caliber bullet." R. p. 613, ll. 10-17. Parnell conceded under cross-examination that there are hundreds of twenty-two caliber firearms and that the bullet recovered from the decedent's body could have been fired from any one of them. R. p. 615, ll. 7-21.

Discussion

The circuit court erred in admitting the alleged murder weapon into evidence because there was insufficient evidence connecting the recovered weapon to the murder or to appellant and thus such evidence was not relevant to the case. Admitting the weapon was also unduly prejudicial to appellant.

"Evidence which is not relevant is not admissible." Rule 402, SCRE. Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Additionally, even relevant evidence should be excluded "if its probative value is substantially outweighed by the danger of unfair

prejudice." Rule 403, SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Elders, 386 S.C. 474, 486, 688, S.E.2d 857, 863 (Ct. App. 2010) (quoting State v. Gilchrist, 329 S.C. 621. 630, 496 S.E.2d 424, 429 (Ct. App. 1998)).

David White, the ***only*** witness to the alleged murder, testified that the gun appellant allegedly used to shoot the decedent was a "twenty-two long." R. p. 283, ll. 23-25. White provided no further details. White did not testify about the "very distinctive" neon green sight nor did he mention the "very distinctive" gold trigger. See R. p. 473, ll. 7-9. As appellant noted at trial, White was high on cocaine and "freaked out" on the night of the alleged murder. See R. p. 436, ll. 8-10. White testified that he did not see any guns before the alleged shooting and that after the alleged shooting he "was in shock" and his "mind went blank." R. p. 280, ll. 14-17; R. p. 282, l. 11 – 283, l. 20. Additionally, the incident allegedly took place in the early morning hours when it was dark outside. See R. p. 281, ll. 14-20. The lack of description of the alleged murder weapon provided by White coupled with the circumstances surrounding the incident including the fact that it was dark and that White was high on cocaine and "freaked out" indicate that it was highly unlikely White could reliably identify the alleged weapon.

The only other information White provided to law enforcement was that appellant allegedly stopped at Bacon Bridge Road on the night of the murder and "tossed the gun out over the bridge." R. p. 289, ll. 18-23; R. p. 293, ll. 1-9. Even if White's testimony that appellant threw the gun over Bacon Bridge is to be believed, there is no reliable evidence

that the weapon recovered by law enforcement and presented at trial as the alleged murder weapon was the actual weapon used to inflict the injury upon the decedent.

Parnell, the firearms and tool mark expert, was unable to determine whether the bullet recovered from the decedent's body was or was not fired from the weapon entered into evidence as the murder weapon because the bullet was so badly damaged. R. p. 612, l. 21 – 613, l. 9. All Parnell could conclude was that the bullet had "all the physical characteristics and the weight consistent with being a twenty-two long rifle caliber bullet." R. p. 613, ll. 10-17. Parnell conceded that the bullet could have been fired from any of hundreds of different types of twenty-two caliber firearms. R. p. 615, ll. 7-21.

Additionally, there was no testimony that appellant owned a similar gun or had been seen with a gun prior to the alleged murder. Tamekka Williams testified that she remembers telling detectives that she had never seen appellant with a gun. R. p. 237, ll. 18-20. Shaquanda White also testified that she told detectives that she had never seen appellant with a weapon. R. p. 265, ll. 9-11. There was no evidence that appellant owned the gun recovered by law enforcement in the Ashley River or that he had ever previously had the gun in his possession. In short, there is nothing tying appellant to that weapon besides David White's testimony that it "looks like" the gun appellant used to allegedly murder the decedent. See R. p. 284, ll. 17-18.

There is no reliable evidence connecting the twenty-two caliber Browning Buck Mark semi-automatic pistol to the murder of Craig Michael Canady or to appellant. Weapons with no connection to the crime are not admissible. See State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010). Therefore, the circuit court erred in finding the firearm relevant and admissible. Furthermore, because there was an insufficient nexus

connecting the weapon to the crime, its admission was unduly prejudicial to appellant as it led the jury to believe that White's testimony was credible because law enforcement discovered the alleged murder weapon where White said it would be located. Since White was the sole witness to the alleged murder, his credibility was crucial to the state's case. This Court should thus find harmful error and remand the case for a new trial.

3.

The court erred in failing to suppress the fruits of evidence derived from a search warrant issued on September 27, 2007 for appellant's 2007 Dodge Durango since the search warrant was based on defective information.

Relevant Facts

Appellant moved prior to the start of trial to suppress all evidence seized as a result of a search warrant issued on September 27, 2007 for his 2007 Dodge Durango on grounds that the warrant was issued in violation of S.C. Code Section 17-13-140 and the Fourth Amendment. R. p. 133, ll. 11-16. Appellant explained that law enforcement had executed a valid search warrant on his vehicle on September 17, 2007 and found no items of evidentiary value. Law enforcement subsequently obtained a second search warrant for his vehicle on September 27, 2007 citing the same grounds for probable cause along with adding new information to the affidavit that was allegedly false. R. p. 133, l. 17 – 134, l. 21. Appellant explained that the new information that was false was the sentence, "Officers obtained several verbal and written statements that Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on September 14, 2007." R. p. 138, l. 3 – 139, l. 19. Appellant alleged that "it was never confirmed that a purchase took place on September 14, 2007." R. p. 139, ll. 4-5.

Appellant argued that the affiant, Detective Mike Giglio of the Dorchester County Sheriff's Office, "willfully and knowingly with reckless disregard for the truth submitted false information on an affidavit for a warrant, and the warrant should therefore be deemed invalid, and its fruits excluded from use in court under the exclusionary rule under the U.S. Constitution." R. p. 137, ll. 4-9.

Detective Giglio testified that, through verbal and written statements from various employees at LKQ Auto Parts and a parts invoice, the Sheriff's Office learned that a customer identified as appellant attempted to purchase a gray "right front seat" pulled from a 2006 Dodge Durango on September 14, 2007. R. p. 143, l. 19 – 144, l. 1; R. p. 145, l. 7 – 146, l. 4. One of the written statements obtained stated, "His dad called in with credit card to pay for seat. Credit card declined. So customer came back the next day and paid cash." R. p. 151, ll. 6-10. Detective Giglio testified that the business, however, could not produce a final sales receipt and thus it was unclear whether the front passenger seat was purchased by appellant legally with cash on September 15, 2007 or whether it was stolen on that day. R. p. 152, l. 16 – 155, l. 24; R. p. 164, ll. 1-17; R. p. 166, l. 17 – 167, l. 11. Regardless, it was undisputed that a seat was not purchased on September 14, 2007. R. p. 151, ll. 6-16.

Detective Giglio testified that he relied on this information when he obtained the second search warrant for appellant's Dodge Durango. R. p. 164, l. 22 - 165, l. 12. Giglio further testified that the statement in the affidavit in support of the second search warrant that stated the seat was purchased on September 14, 2007 was a "clerical error" and that it should have stated September 15, 2007. R. p. 165, l. 17 – 166, l. 4. Giglio claimed that he did not know he made a mistake regarding the date until appellant pointed it out to him. R. p. 166, ll. 5-10.

After Detective Giglio testified, appellant cited State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975), and argued the officer "provided false information to a magistrate with absolutely no intention of showing good faith effort to correct it. This information was sworn to and taken by the magistrate as true. I'm sure if [the magistrate] knew it was a lie

the warrant would never have been issued, and since we know as much now, I ask for this warrant to be suppressed." R. p. 168, l. 1 – 169, l. 7.

The court found that the affidavit was not given in bad faith or recklessly and that it was supported by probable cause. The court therefore denied appellant's motion to suppress. R. p. 169, l. 14 – 170, l. 15.

Discussion

The Fourth Amendment to the United States Constitution, made applicable to the States by way of the Fourteenth Amendment, protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV. Additionally, under S.C. Code Section 17-13-140, a warrant should be issued "only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant."

"The Fourth Amendment itself provides no remedy for a violation of the warrant requirement." State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) (internal citations omitted). "However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." Id.

Under South Carolina case law, the proper test for dealing with inaccuracies in an affidavit in support of a search warrant is as follows: "Did the officer . . . intentionally, recklessly, or in bad faith recite facts he knew or should have known to be erroneous,

without correcting the error by additional affidavit or affirmation, to obtain the issuance of a warrant?" Sachs, 264 S.C. at 556, 216 S.E.2d at 509.

Additionally, in State v. Missouri, 337 S.C. 548, 556, 524 S.E.2d 394, 398 (1999), the South Carolina Supreme Court invalidated a search warrant where it found "the combination of the police officer's deliberate falsehood and his omission of critical facts pollute the affidavit to the extent that a magistrate could not have found that probable cause existed to issue the search warrant."

Appellant established during the suppression hearing that Detective Giglio's statement in the affidavit in support of the second search warrant that "Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on September 14, 2007" was false. The evidence produced at the suppression hearing indicated that the Dorchester County Sheriff's Office learned from employees at LKQ Auto Parts that a passenger seat was pulled from a 2006 Dodge Durango for a customer identified as appellant on September 14, 2007. However, there was no evidence that the seat was actually purchased on that date. Instead, there was ***questionable*** evidence regarding whether the seat was purchased by appellant on the following day, September 15, 2007. The Sheriff's Office had no evidence to confirm appellant or anyone else actually purchased a front passenger seat on September 15, 2007.

It is likely Detective Giglio either intentionally or recklessly made the statement that appellant purchased a new front passenger seat on September 14, 2007 when he knew or should have known through investigation that the information was false. Because without the false statement there would be no new additional probable cause to support a second search warrant, the evidence seized as a result of the warrant should have been suppressed

under the exclusionary rule. Because the trial court erred by denying appellant's motion to suppress, the case should be remanded and appellant granted a new trial.

4.

The court erred by refusing to allow the defense to question Detective Zensen about DNA testing performed on a seized firearm, specifically as it pertained to Craig Michael Canady, since the defense had the right to show that the detective's answers were inconsistent in this regard and because the evidence was relevant to the thoroughness and accuracy of the investigation.

Relevant Facts

Detective Zensen of the Dorchester County Sheriff's Office testified extensively regarding her involvement in the investigation of the death of Craig Michael Canady. She was the crime scene technician who processed the scene where the body was discovered on Clubhouse Road. R. p. 450, l. 17 – 451, l. 11. She also assisted in the execution of a search warrant on appellant's Dodge Durango and transported the alleged murder weapon to SLED after it was recovered from the water. R. p. 458, ll. 4-17; R. p. 472, l. 25 – 474, l. 25.

Throughout her testimony, Zensen testified about various items that were sent to SLED for testing, specifically for comparison against the DNA of the decedent, including swabs, hair, and fingernail clippings, among numerous other items. Towards the end of cross-examination, appellant asked Zensen whether she recalled anything else being sent to SLED for testing. Zensen responded, "No." R. p. 515, l. 12 – 516, l. 2. At this point, appellant attempted to impeach Zensen with evidence that on January 7, 2008 a request was sent to SLED to compare a twenty-five caliber automatic handgun against the DNA of Craig Michael Canady. The state objected on grounds of lack of relevance. R. p. 516, l. 1 – 517, l. 3.

The state argued that the firearm appellant wished to question Zensen about was recovered from an unrelated individual at some other time and has "no connection to the

crime whatsoever." R. p. 517, ll. 10-13. Appellant argued that he should be able to impeach Zensen with the SLED report "since the question was not answered correctly I would, at least, like to straighten out the mis-statement and the false representation . . ." R. p. 518, ll. 13-21. Appellant stated that the twenty-five caliber handgun was recovered two months after his arrest and was listed under the same SLED number. R. p. 520, ll. 20-24; R. p. 522, ll. 3-6.

After further discussion, the court held, "This is absolutely not impeachment. If you want to ask her directly was there another gun at some later time that there was DNA testing done with regards to the alleged victim, we'll talk about that, but this is not impeachment." R. p. 521, ll. 8-22. The court noted that the handgun appellant referred to was listed under a different SLED number than the evidence in the case and that the testing was completed five months later. Id.; R. p. 522, ll. 7-10. The court also stated that the line of questioning "up to that point had been items that this witness had removed from your car and had been involved in this investigation. And there's no question in my mind, but that was the focus of your questions. I do not believe that it is fair impeachment for you to now ask her about a DNA comparison that occurred some five, six months later . . . " R. p. 523, l. 21 – 524, l. 16.

The court concluded that appellant could question Zensen about DNA testing performed on the twenty-five caliber handgun if he could prove relevance, but not as impeachment. R. p. 519, ll. 16-22; R. p. 521, l. 24 – 522, l. 2; R. p. 524, l. 17 – 525, l. 2.

Appellant maintained the evidence was relevant because the weapon was recovered about two to three months after appellant was arrested from an individual acquainted with the decedent who lived in the very apartment complex where the murder allegedly occurred and was sent to SLED for DNA comparison testing to the decedent, Craig Michael Canady.

Appellant reasoned the evidence was relevant because if the alleged murder weapon was already found then law enforcement would have no reason to investigate another firearm. R. p. 525, l. 3 – 526, l. 6. Appellant argued:

> MR. CHISOLM: My co-defendant's daughter, Shaquanda White, who took the stand, who's testified already.
>
> THE COURT: Yes.
>
> MR. CHISOLM: Her boyfriend at the time was named Siquan Moody. That's who - -
>
> COURT REPORTER: Who?
>
> MR. CHISOLM: Siquan Moody. The person that Tamekka Williams got on the stand and said that Red was with the last time she saw him on Thursday, and after he left Siquan, Red came with me. I told detectives after Red left me he went back to Azalea Park. Azalea Park is where Siquan Moody stays at. The person that they recovered that gun from is Pierre Moody, that's Siquan Moody's younger brother. They're testing DNA from Craig Michael Canady against Pierre Moody's gun and they're all in the Haven Oaks - - I'm sorry - - they're all in the Azalea Park area, and this is after, like I said, Your Honor, we're already under arrest. But they're still investigating that Red went to Azalea Park and Siquan Moody and Pierre Moody, and they're testing his DNA exactly two to three months after David White said this happened, I did this, after David White gave them a weapon that has never been proven to be the murder weapon. If all that was true, why are they still investigating Siquan Moody's little brother against Craig Michael Canady's DNA on his gun. . ."

R. p. 525, l. 3 – 526, l. 2.

The court ruled the evidence was not relevant because according to the SLED report, the handgun recovered at the later time was a "semi-automatic pistol which could not fire the bullet that was removed from the body of this alleged victim." R. p. 527, l. 24 – 529, l. 4.

Discussion

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

Appellant should have been permitted at trial to impeach Detective Zensen with the SLED report that a second firearm was sent to SLED for comparison testing against the DNA of the decedent. By failing to allow appellant to impeach Zensen, her inaccurate statement remained uncorrected in the minds of the jurors. The jury was led to believe that all the potential evidence that was sent to SLED had been named and discussed at trial when the truth was that law enforcement was investigating a second firearm as being involved in the murder.

Additionally, the fact that law enforcement was examining another firearm in connection with the case was relevant to the thoroughness and accuracy of the investigation into the death of Craig Michael Canady. The fact that law enforcement was investigating a second weapon indicated that officers from the Dorchester County Sheriff's Office were not firmly convinced that the gun recovered from the Ashley River was the murder weapon and that the officers considered that someone else may have been involved in the murder. This is relevant evidence weakening the case against appellant and appellant should have been permitted to question the detective about this relevant evidence to properly defend himself.

5.

The court erred by allowing appellant to represent himself where the court did not inquire about the nature of the conflicts appellant was having with his attorney, did not warn appellant that a murder conviction here would constitute an aggravating circumstance for the state to seek the death penalty in his other Berkeley county murder case, and was very vague, and not specific about the dangers and disadvantages of self-representation.

Relevant Facts

An in camera ex-parte hearing was held on appellant's request to represent himself. Appellant was represented by John Loy at the time. R. p. 1; R. p. 4, ll. 1-7. Loy, appellant, three deputies, the judge, and the court reporter were the only people allowed in the courtroom. R. p. 4, l. 1 – 5, l. 24. The judge also sealed the transcript. [1]

It was apparent there were conflicts between appellant and defense counsel Loy. Appellant offered: "I don't want to waste the court's time arguing the conflicts and issues that me and Mr. Loy have together. I would like to proceed pro se as of this day February 11, 2011." R. p. 7, ll. 16-19.

The judge noted that she learned appellant was in Berkeley County, and that he had to be transported to Dorchester County for this hearing. The judge offered she needed to know if appellant was using his motion for purposes of delaying the trials. Appellant told the judge, in response to her question, that his Berkeley County trial had not yet been scheduled. R. p. 9, ll. 14-24.

Significantly, the subsequent Berkeley County case was going to be a murder trial also. However, that important fact was never raised during this waiver hearing. Neither was

[1] Appellant later petitioned this Court to unseal the transcript which was granted.

the fact that if appellant was convicted of murder in Dorchester County that that conviction would constitute a "prior murder conviction" which would allow the state to seek -- or legitimately threaten to seek -- the death penalty in Berkeley County.[2] R. p. 9, l. 10 – 10, l. 9.

During the colloquy, appellant told the judge he was married with four children and that he had one year of college. Appellant was never asked where he went to college and later told the judge he either graduated from high school or "got your GED" in response to a very open-ended question. R p. 11, l. 19 – 13, l. 5.

Appellant had been in the service and he spent ten months in Afghanistan. Appellant also told the judge he was in "Special Forces," and the judge interjected that she understood appellant could not talk about what occurred in Special Forces. R. p. 13, l. 7 – 15, l. 2.

Appellant had also worked with heavy machinery and most recently worked at a Sonic restaurant and then a McDonald's. However, his murder charge had hindered his ability to become employed. R. p. 12, l. 2 – 21, l. 10. Appellant denied he had been treated for post-traumatic stress syndrome or had received any mental health treatment. R. p. 21, ll. 14-16.

The judge told appellant that his attorney, John Loy, was her friend "and he is as fine a lawyer as there is for sure in this state, probably this country, you understand that?" Appellant said that he did understand. R. p. 23, l. 16 – 24, l. 4.

---

[2] State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)(in context of statutory mitigating circumstance of absence of significant history of prior criminal conviction involving use of violence against another person, word "prior" would be construed to mean prior to trial, rather than prior to time of crime for which defendant was on trial).

The judge said that one of her prepared questions dealt with possible defenses to the charge. She mentioned self-defense but then said: "We're not going to talk about your defenses. We're just not going to do that. I'm not going to let you go into your factual basis. We're not going to do that. I'm not going to let you do that." Appellant did not make any "audible response." R. p. 27, l. 22 – 28, l. 5.

The judge only mentioned appellant's Berkeley County charges in passing stating they were "not helpful." R. p. 28, l. 25 – 29, l. 10. The judge said that she did not need to know any more about the Berkeley charge although it was potentially "problematic." R. p. 29, ll. 11-21.

The judge very briefly told appellant he would have to "comply with the rules . . . rules of evidence, the court rules." R. p. 32, ll. 10-18. The judge stated that she thought appellant was proceeding with his eyes open but then stated:

> I don't think I understand the "why" [you want to represent yourself] part of it. I think I don't like it. But that - - the judge's pleasure with it is - - doesn't get to be factored in. I don't get a vote. You do. I don't.

R. p. 35, ll. 10-13.

The judge told appellant he was very bright and that he probably could have gone to law school. She told appellant that he was capable and aware of what he was doing. R. p. 36, ll. 2-9.

Discussion

The defendant may waive his right to counsel and proceed pro-se, but only if it is clear on the record that he understands the dangers and disadvantages of self-representation. See Faretta v. California, 422 U.S. 806 (1975). Here, appellant was only told in a vague manner the dangers and disadvantages of self-representation. Appellant was advised in a

very brief fashion that he would have to comply with the rules of evidence, and the rules of court. There is nothing in this waiver record to show appellant understood the rules of evidence or what court rules the judge was referring to.

The judge did not make any effort to find out the source of the friction between defense counsel Loy and appellant. Many defendants before trial express problems with their defense attorneys which are solved by the trial judge engaging the defendant in a *specific colloquy about the nature of the problem.*

Appellant had a pending murder charge against him in Berkeley County at the time of this waiver of counsel hearing. A murder conviction in Dorchester County could and was used as an aggravating circumstance that would justify the state seeking -- or threatening to seek – the death penalty against him in a future trial in Berkeley County. See S.C. Code §16-3-20 (C)(a)(2) the aggravating circumstances that "the murder was committed by a person with a prior conviction for murder." Yet, the Berkeley County murder case was hardly even mentioned in passing during the waiver hearing to impress upon appellant the seriousness of what he was doing.

Conversely, in a case decided on the day of the filing of this initial brief, State v. Barnes, Op. No. 27322 (filed October 16, 2013), our Supreme Court ruled the defendant would have been allowed to represent himself where he demonstrated "an understanding of the process of capital *voir dire*, [he] stated his intention to pursue a third-party guilt defense at trial and discussed relevant case law, the burden of proof, and his right to testify." The defendant in State v. Barnes also answered the judge's detailed inquiries about the problems with his defense attorneys and the "trust issues" about why he felt betrayed. The defendant

in State v. Barnes was also had read relevant case law, and he showed some understanding of the rules of evidence when questioned by the trial judge.

None of the factors in Barnes which evidenced an intelligent waiver of the right to counsel, and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self-representation exist in the record before this court.

Appellant Chisolm is similarly situated to the defendant in State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010) where our Supreme Court held the record did not demonstrate a knowing and intelligent waiver of the right to counsel with a full understanding of the dangers and disadvantages of self-representation. See Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990). Cf. State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997); State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).

Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Dorchester County Court of General Sessions for a new trial.

Respectfully submitted,

By:

Robert M. Dudek
Chief Appellate Defender

Lara M. Caudy
Appellate Defender

ATTORNEYS FOR APPELLANT

This 5th day of February, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 5, 2015

Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT.

APPELLATE CASE NO. 2011-200186

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, Office of Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of February, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of February, 2015.

Rhonda Deneese Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Don-Survi Chisolm, Appellant.

Appellate Case No. 2011-200186

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244

Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, South Carolina 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

APPELLANT'S STATEMENT OF ISSUES ON APPEAL 1

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL 2

RESPONDENT'S STATEMENT OF THE CASE 3

RESPONDENT'S STATEMENT OF FACTS 4

ARGUMENT 9

1.
The trial judge did not abuse her discretion in admitting limited and brief evidence of prior drug sales through the testimony of Thomas Simonelli in roof of material facts directly related to the instant murder, namely possible motive, and as the context of the murder cleanup efforts immediately thereafter 9

2.
The trial judge did not abuse her discretion in admitting into evidence the gun pulled from the river based on the co-defendant's information to officers as to where the murder weapon was discarded, especially where the weapon pulled from the river was consistent with the description of the murder weapon by the co-defendant, the weapon was consistent with the caliber of bullet recovered from the victim's body at autopsy, and the weapon was properly identified as the weapon pulled from the river and secured for ballistic testing and subsequent submission at trial 16

3.
The trial judge did not abuse her discretion in denying Appellant's motion to suppress based on incorrect information in the search warrant where Appellant's only actual argument of incorrect fact in regard to the assertion of a purchase was simply an incorrect date. Appellant's argument that the fact of purchase of a replacement seat as supported by the witness statements were ultimately not supported by documentation as invalidating the warrant is against precedent 23

4.
The trial judge did not abuse her discretion in disallowing cross-examination concerning testing of a gun in another matter that could not have been the murder weapon in this case given there was neither a nexus to the crime nor proper point of impeachment to be made based on same. 28

5.
The record fully and fairly supports the trial judge's finding of a knowing and intelligent waiver of the right to counsel after inquiry on the understanding of the dangers and disadvantages of self-representation. 32

CONCLUSION.....44

TABLE OF AUTHORITIES

Federal Cases:

Dallio v. Spitzer,
343 F.3d 553 (2nd Cir. 2003) 39
Davis v. United States,
___ U.S. ___, 131 S.Ct. 2419 (2011) 26
Delaware v. Van Arsdall,
475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) 29
Faretta v. California,
422 U.S. 806, 95 S.Ct. 2525 (1975) 36, 39, 41
Iowa v. Tovar,
541 U.S. 77, 124 S.Ct. 1379 (2004) 39, 40
Johnson v. Zerbst,
304 U.S. 458, 58 S.Ct. 1019 (1938) 36, 37, 38
United States v. Davis,
269 F.3d 514 (5th Cir. 2001) 39
United States v. Hayes,
231 F.3d 1132 (9th Cir. 2000) 40, 41

State Cases:

Ex parte Jackson,
381 S.C. 253, 672 S.E.2d 585 (Ct. App. 2009) 38
Gardner v. State,
351 S.C. 407, 570 S.E.2d 184 (2002) 37, 41
Prince v. State,
301 S.C. 422, 392 S.E.2d 462 (1990) 37
Salley v. State,
306 S.C. 213, 410 S.E.2d 921 (1991) 37
State v. Aleksey,
343 S.C. 20, 538 S.E.2d 248 (2000) 29
State v. Bellue,
259 S.C. 487,193 S.E.2d 121 (1972) 19, 20, 21
State v. Boiter,
302 S.C. 381, 396 S.E.2d 364 (1990) 30
State v. Bryant,
383 S.C. 410, 680 S.E.2d 11 (Ct. App. 2009) 38
State v. Cash,
309 S.C. 40, 419 S.E.2d 811 (Ct. App.1992) 42
State v. Coleman,
301 S.C. 57, 389 S.E.2d 659 (1990) 12

State v. Colf,
337 S.C. 622, 525 S.E.2d 246 (2000) 11, 17
State v. Cope,
405 S.C. 317, 748 S.E.2d 194 (2013) 11
State v. Dickerson,
341 S.C. 391, 535 S.E.2d 119 (2000) 12, 13
State v. Dixon,
269 S.C. 107, 236 S.E.2d 419 (1977) 37
State v. Dunbar,
356 S.C. 138, 587 S.E.2d 691 (2003) 18, 22
State v. Elders,
386 S.C. 474, 688 S.E.2d 857 (Ct.App. 2010) 19
State v. Gillian,
360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004) 30
State v. Gillian,
373 S.C. 601, 646 S.E.2d 872 (2007) 20, 21
State v. Gore,
283 S.C. 118, 322 S.E.2d 12 (1984) 13
State v. Gregory,
198 S.C. 98, 16 S.E.2d 532 (1941) 31
State v. Huggins,
325 S.C. 103, 481 S.E.2d 114 (1997) 11, 17
State v. Johnson,
293 S.C. 321, 360 S.E.2d 317 (1987) 11
State v. Johnson,
338 S.C. 114, 525 S.E.2d 519 (2000) 29
State v. King,
334 S.C. 504, 514 S.E.2d 578 (1999) 12, 13, 14
State v. McEachern,
399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012) 11
State v. McGee,
408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014) 14
State v. McLauren,
349 S.C. 488, 563 S.E.2d 346 (Ct.App. 2002) 41
State v. Price,
368 S.C. 494, 629 S.E.2d 363 (2006) 14
State v. Pruitt,
260 S.C. 396, 196 S.E.2d 107 (1973) 21
State v. Robinson,
408 S.C. 268, 758 S.E.2d 725 (Ct.App. 2014) 27
State v. Sachs,
264 S.C. 541, 216 S.E.2d 501 (1975) 25, 26
State v. Saltz,
346 S.C. 114, 551 S.E.2d 240 (2001) 31

State v. Sullivan,
267 S.C. 610, 230 S.E.2d 621 (1976) 26, 27
State v. Thompson,
355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003) 41
State v. Washington,
379 S.C. 120, 665 S.E.2d 602 (2008) 11
State v. Watson,
900 A.2d 702 (Me. 2006) 41
State v. Winkler,
388 S.C. 574, 698 S.E.2d 596 (2010) 38, 39
Stevenson v. State,
337 S.C. 23, 522 S.E.2d 343 (1999) 37
Wilder v. State,
388 S.C. 282, 696 S.E.2d 587 (2010) 11, 14, 22
Wroten v. State,
301 S.C. 293, 391 S.E.2d 575 (1990) 37, 41

State Court Rules:

Rule 403, SCRE 1, 31
Rule 404(b), SCRE 1, 11

Other Authorities:

Am.Jur. Crim.Law § 1153 39
Black's Law Dictionary (9th ed. 2009 11

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by ruling evidence of appellant's prior drug dealing was admissible since it was unduly prejudicial pursuant to Rule 403, SCRE, and the judge erred by ruling it was admissible to prove motive under Rule 404(b), SCRE?

2.

Whether the court erred by allowing a weapon into evidence since there was not a sufficient nexus to prove the weapon was involved in the murder, and it was therefore highly prejudicial?

3.

Whether the court erred in failing to suppress the fruits of evidence derived from a search warrant issued on September 27, 2007 for appellant's 2007 Dodge Durango since the search warrant was based on defective information?

4.

Whether the court erred by refusing to allow the defense to question Detective Zensen about DNA testing performed on a seized firearm, specifically as it pertained to Craig Michael Canady, since the defense had the right to show that the detective's answers were inconsistent in this regard and because the evidence was relevant to the thoroughness and accuracy of the investigation?

5.

Whether the circuit court erred by allowing appellant to represent himself where the court did not inquire about the nature of the conflicts appellant was having with his attorney, did not warn appellant that a murder convition would constitute an aggravating circumstance for the state to seek the death penalty in his other Berkeley County murder case, and was very vague, and not specific about the trial dangers and disadvantages of self-representation?

(FBOA, p. 1-2).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial judge abused her discretion in admitting limited and brief evidence of prior drug sales through the testimony of Thomas Simonelli in proof of material facts directly related to the instant murder, namely possible motive, and as the context of the murder cleanup efforts immediately thereafter?

2.

Whether the trial judge abused her discretion in admitting into evidence the gun pulled from the river based on the co-defendant's information to officers as to where the murder weapon was discarded, especially where the weapon pulled from the river was consistent with the description of the murder weapon by the co-defendant, the weapon was consistent with the caliber of bullet recovered from the victim's body at autopsy, and the weapon was properly identified as the weapon pulled from the river and secured for ballistic testing and subsequent submission at trial?

3.

Whether the trial judge abused her discretion in denying Appellant's motion to suppress based on incorrect information in the search warrant where Appellant's only actual argument of incorrect fact in regard to the assertion of a purchase was simply an incorrect date. Appellant's argument that the facts of purchase of a replacement seat as supported by the witness statements were ultimately not supported by documentation as invalidating the warrant is against precedent.

4.

Whether the trial judge abused her discretion in disallowing cross-examination concerning testing of a gun in another matter that could not have been the murder weapon in this case given there was neither a nexus to the crime nor proper point of impeachment to be made based on same?

5.

Whether the record fully and fairly supports the trial judge's finding of a knowing and intelligent waiver of the right to counsel where it reflects the judge engaged in a lengthy inquiry and personalized inquiry on the understanding of the dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted Appellant, Don-Survi Chisolm, in January 2008 for the murder of Craig Michael Canady, Jr. (R. pp. 690). John Loy, Esq., initially represented Appellant on the charge. On February 11, 2011, Appellant moved to dismiss counsel and requested to represent himself. The Honorable Diane Schafer Goodstein, after inquiry on the waiver of the right to counsel, granted the request. (R.p. 33-36).

Appellant's case was originally called to trial on August 22-23, 2011, before the Honorable Edgar W. Dickson. Appellant represented himself. Mr. Loy was standby counsel. (R.p. 86). Appellant moved for a mistrial based on an answer received from a prosecution witness during cross-examination, which was ultimately granted. (R. p. 116, line 3 – p. 131, line 16).

Another jury trial was scheduled and held September 13-19, 2011, before Judge Goodstein. Appellant again represented himself and Mr. Loy was, again, present as standby counsel. The jury convicted as charged. (R. p. 686, lines 10-14). Judge Goodstein sentenced Appellant to life imprisonment. (R. p. 689, lines 4-6). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

On Saturday, September 15, 2007, a hunter came across a body in a ditch along Clubhouse Road. (R. p. 186, lines 11-22). Officers recovered store cards from the body that were registered to Tamekka Williams, who in turn identified the individual as her boyfriend, Craig Michael Canady, Jr. (R. p. 196, line 11 – p. 197, line 18). While officers were standing outside of Ms. Williams' home, Appellant approached and volunteered that he had seen the victim (known as "Red") and David White (known as "Scully") that prior "Tuesday or Wednesday." Appellant also stated he had dropped-off victim at Haven Oaks (where both the victim and Appellant lived) at approximately 4:00 am, and last saw the victim go across a ditch toward nearby Azalea Apartments. (R. p. 198, line 8 – p. 199, line 8; p. 556, line 21 – p. 557, line 1). Appellant remained very interested in the ongoing investigation, offering information, observing the officers investigation and approached at least one individual that the officers spoke to directly after the officers left. (R. p. 556, line 21 – p. 558, line 8). Appellant voluntarily gave another statement that he was actually with the victim late Wednesday to the early morning hours of Thursday, which was corroborated by cell phone records. (R. p. 202, line 7 – p. 203, line 24). He also admitted the victim was riding in Appellant's front passenger seat with Scully in the back. (R. p. 204, lines 15-21).

David "Scully" White testified at trial that on September 12, 2007 (Wednesday), at approximately 5:00 in the afternoon, Appellant picked him up in Appellant's Dodge Durango to see the birth of Scully's fiance's daughter's child. (R. p. 268, line 3 – p. 271, line 17). Scully and Appellant, however, ending up using powder cocaine, and, instead of going to the hospital, they "just rode around and got high." (R. p. 273, lines 10-15).

About 10:00 that night, they called a girl, later met her and stayed with her until midnight. (R. p. 273, line 17- p. 274, line 17). Appellant then took Scully to a store for a beer and cigarettes, then took Scully back to Scully's home. (R. p. 274, line 19 – p. 275, line 21). Appellant called later, sometime after 1:00 am in the early morning hours of September 13, 2007, and asked Scully to go with him to get more cocaine. (R. p. 277, lines 2-9). When Appellant picked-up Scully in the Durango, "Red" was in the passenger seat, and Scully got in the back. (R. p. 278, line 15 – p. 279, line 19). According to Scully, Appellant asked "about get a lick," *i.e.* to commit an armed robbery, but Scully stated he was "not dressed for that," having left the house in slippers. (R. p. 280, lines 1-13). Appellant began to ride around to look for someone in Azalea Park, then "pull[ed] out the gun and shot Red in the head." (R. p. 282, lines 14-15). Scully testified "there wasn't no discussion. No argument. I couldn't tell you why he even shot my man for." (R. p. 282, line 23 – p. 283, line 1). Scully protested, Appellant cursed and kept talking (though Scully could not focus on what was being said after having seen the unprovoked shooting), and victim quickly slumped over and took his last breath. (R. p. 282, line 17 – p. 283, line 20; p. 300, lines 3-5). Scully testified the gun was "a 22 long, long on the muzzle." (R. p. 283, lines 23-25). Scully testified Appellant then placed the gun on the center console. (R. p. 284, lines 19-21). Appellant started to dump the body nearby, but Scully advised to go further out to avoid being seen. (R. p. 286, line 17 – p. 287, line 8). They eventually turned on Clubhouse Road where they "pulled to the side of the road, and throwed Red's body in the ditch." (R. p. 287, lines 17-22). Scully testified Appellant called his wife and "told her that he just got finished putting Red's body in the ditch." (R. p. 288, lines 18-25). Appellant instructed Scully the "story" would be they

"rode around, got high. He took me home, him and Ray left and went back towards the high school... Azalea Park, Haven Oaks area." (R. p. 289, lines 5-17). Before Appellant took Scully home, he stopped at Bacon Bridge Road and "tossed the gun out over the bridge." (R. p. 289, lines 20-23). He also used victim's phone to call "Sike's number trying to make it seem like it was Red calling him." Scully knew Sike as the boyfriend of his girlfriend's daughter, (R. p. 268, lines 3-19), and could recognize Sike's voice as he answered and repeated hello several times, (R. p. 293, line 19 – p. 294, line 5). When Scully exited the car at his house at approximately 5:00 am, he could see "a big spot of blood" on the passenger side seat of Appellant's Durango. (R. p. 294, line 6 – p. 295, line 15). The next day, in the afternoon, Appellant talked to Scully "about he was trying to find a seat for the truck," and showed Scully "the hole he cut out the seat" in the Durango, and he saw the big blood stain had been cut out. (R. p. 296, line 3- p. 297, line 9). Scully also noticed the seat belt on that side had been cut off. (R. p. 298, lines 6-11). Appellant instructed Scully "to be quiet, ain't nothing going to happen." (R. p. 298, lines 12-16). Scully testified he maintained his exculpatory story out of fear of Appellant until Appellant was arrested: "... when I found out they caught him, I call my attorney" to tell what really happened. (R. p. 300, lines 1-2). (See also R. p. 299, lines 21-24; p. 315, lines 20-21; p. 345 line 24-p. 346, line 1). After two dive attempts in the river, officers located a gun matching the description at the location as Scully described. (R. p. 430, line 2 – p. 431, line 4).

The State introduced records of cellphone calls placing Appellant's phone at approximately the same places and times as described in Scully's testimony. (See R. p. 360, line 11 – p. 363, line 12). In further corroboration, the forensic pathologist opined

the "gunshot wound ... entered the left side of [victim's] head" and the bullet continued back and "slightly up" to the other side. She opined this was consistent with being shot from someone from the driver's seat if the victim had been in the passenger seat. (R. p. 375, line 5 – p. 376, line 21). Additionally, the doctor testified the decomposition evidence was consistent with the body being in the weather for three days. (R. p. 376, line 22- p. 378, line 3).

Shaquanda White, Sike's girlfriend's (one of Scully's girlfriend's daughters), testified that she recalled September 12, 2007 as she was going to see a new-born neice. She testified she recalled seeing Appellant's Durango pulling-up at approximately 3:00 am, and Red was in the passenger seat. Scully came out and they all left together in the Durango. (R. p. 254, line 19 - p. 257, line 21). She also testified she had ridden in Appellant's Durango approximately a week before, in the passenger seat. Ms. White testified the passenger seat "[n]ormal condition," did not need to be replaced, and the "[s]eat belt was fine." (R. p. 253, line 14- p. 254, line 11).

Shakara Rose, a neighbor who knew the victim, testified that when the victim was missing, she recalled (though admittedly somewhat vaguely and less forcefully on cross-examination) that she heard Appellant make reference to being "in the ditch stinking" while talking with others near her front porch. (R. p. 245, line 11 – p. 248, line 7).

The investigation showed that Appellant replaced the passenger seat in his Dodge Durango directly after the murder. Richard Johns and George Gallardo from LKQ Auto Parts testified that on September 14, 2007, Appellant contacted them and requested a passenger side seat for the Durango and a seatbelt, which they pulled from a junk Durango at that time. (R. p. 392, line 8 – p. 395, line 21; p. 401, line 1 – p. 402, line 9).

The serial number found on the passenger seat of Appellant's Durango matched those of the junk Durango at LKQ. (R. p. 548, lines 5-24). In spite of these cleanup efforts, two areas in Appellant's Durango – on the center console – still tested positive for blood, however, the amount was insufficient to run a DNA test. (R. p. 502, line 11 – p. 504, line 25; p. 533, lines 8-18). The seatbelt on the passenger side was completely missing, "cut all the way down to the retractor." (R. p. 463, line 3 – p. 466, line 16).

Detective Zensen testified, from review of the victim's body when found, the victim had blood down his back, and such blood would likely transfer to a seat if he was seating in the seat at the time. (R. p. 472, lines 3-10).

Officers determined that in November 2007, Appellant "withdrew his children from school and re-enrolled them in a Florida school district..." (R. p. 565, lines 2 –14). Officers enlisted the help of the United States Marshals Service and the Jacksonville Sheriff's Office to ultimately locate Appellant. (R. p. 565, line 18 – p. 566, line 6).

Appellant did not testify at trial. However, he presented one witness, his sister Ejuhavna Chisolm. Ms. Chisolm testified Appellant purchased the Durango from her. She testified that it was in fair condition, but had "burn spots on the passenger side...." (R. p. 619, line 13 – p. 620, line 22). She testified that she had previously cut out the passenger side seat belt (though she could not recall when or how) as she had been "in an abusive relationship" and wanted to ensure she could escape the car if necessary. (R. p. 621, line 1 – p. 623, line 10). She testified Appellant had moved to Florida with her (was there at the time of arrest), and testified that was to help with her abusive relationship and her children. (R. p. 621, line 16 – p. 622, line 4).

ARGUMENT

I.

The trial judge did not abuse her discretion in admitting limited and brief evidence of prior drug sales through the testimony of Thomas Simonelli in proof of material facts directly related to the instant murder, namely possible motive, and as the context of the murder cleanup efforts immediately thereafter.

Relevant Facts:

During a break in the trial proceedings, and outside the presence of the jury, the State advised the trial judge it would offer the testimony of Thomas Simonelli:

> ... The gist of Mr. Simonelli's testimony is that around September - - it would have been the 14th, that Friday, he received calls from Mr. Chisolm in reference to Mr. Simonelli paying LKQ automotive for the car seat. The payment arrangement for that seat was that Mr. Chisolm was going to pay him twice the amount in cocaine in exchange for him putting the seat on his credit card. ... Also, the testimony by Mr. Simonelli would be that he knows the defendant because that was his cocaine supplier.

(R. p. 382, lines 2-15). (See also R. p. 386, lines 10-19).

The State argued the testimony was admissible in two ways: "under Rule 404(b) to show motive," specifically, "that defendant was selling drugs in the Haven Oaks area, [and] the victim was selling drugs in the Haven Oaks area," and also to show he was "trading cocaine [in a straw-man purchase] to pay for a seat the day after a murder." (R. p. 382, lines 16-24; p. 384, lines 15-22). The State noted Tamekka Williams' testimony that the victim had just recently begun selling drugs in their area and argued "that would be quite a good reason for Mr. Chisolm to want to take out a fellow drug dealer that's cutting into his territory." (R. p. 384, line 23 – p. 385, line 10). (See also R. p. 241, line 20- p. 242, line 1). The State also noted that "the payment arrangement was going to be twice as much cocaine as the value of the seat." (R. p. 386, lines 20-25).

Appellant asserted such was "pure speculation and it is highly prejudicial... remote in time ... not res gestae... not subjection of conviction, its purely unrelated and unsubstantiated conjecture." (R. p. 385, lines 11-14). (See also R. p. 388, lines 5-24).

The trial judge found the testimony relevant as to the purchase and payment by cocaine, and would allow the argument on motive, "though motive is not an element of the offense...." (R. p. 388, line 25 - p. 389, line 15). The trial judge considered the prejudicial effect compared to the probative value. She found cocaine to be a major part of the testimony already given, "what brought them together," and reasoned the case was not a similar drug offense which may increase the prejudicial value but does not in this case. (R. p. 390, lines 3-16). She allowed the testimony. (R. p. 390, lines 17-20).

Mr. Simonelli testified he knew Appellant because Appellant sold him drugs. (R. p. 411, lines 21-24). Apellant objected to the testimony on the grounds argued previously. (R. p. 412, lines 1-4). Mr. Simonelli continued and explained he had a flexible payment arrangement, essentially Appellant would trust him for payment. He testified in exchange for purchasing the replacement seat as requested, he could cancel some of his drug debt to Appellant: "... I owed him some money, so I said we'll squash the bill ... and trade some more cocaine or something like that." (R. p. 413, line 25– p. 414, line 4)

On appeal, Appellant argues the testimony was improper for a number of reasons: 1) remote in time; 2) irrelevant to murder; 3) irrelevant to prove motive; and 4) probative value substantially outweighed by unfair prejudice. (FBOA, p. 7). He argues the evidence of "prior drug dealing was highly prejudicial, failed to establish any logical motive based on the evidence presented, and was extremely destructive to appellant's character and credibility." (FBOA, p. 10).

Discussion:

"The [a]dmission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 - 248 (2000) (*citing State v. Huggins,* 325 S.C. 103, 481 S.E.2d 114 (1997)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law," *State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013) (*citing State v. Washington,* 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008)), or when the ruling lacks factual support in the record, *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010). *See also State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 609 (Ct. App. 2012) (same).

Appellant essentially argues the trial judge erred in admitting the evidence of prior drug dealing when the State failed to show a "logical motive" based on the evidence. (See FBOA, p. 10). Appellant's argument the evidence was mere character evidence fails in light of the record.

Prior crimes and bad acts may be admissible to show motive, intent, the absence of mistake or accident, common scheme or plan, or the identity of the perpetrator of the crime at bar. Rule 404 (b), SCRE. "Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged." *State v. Johnson*, 293 S.C. 321, 324, 360 S.E.2d 317, 319 (1987). A material fact is "[a] fact that is significant or essential to the issue or matter at hand." *Black's Law Dictionary* (9th ed. 2009). Even were admissible as evidence of a material fact, "the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejuidice or misleading the jury." *Id.*

Reference to prior drug use or drug transactions should not be admitted where there is no testimony that drug use or a drug transaction was part of the circumstances of the crime. *State v. Coleman*, 301 S.C. 57, 389 S.E.2d 659 (1990). To avoid being merely improper character evidence, "the drug use must have some relevant connection to the crime charged." *State v. Dickerson*, 341 S.C. 391, 397, 535 S.E.2d 119, 122 (2000) (*citing State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999) ("The record must support a logical relevance between the prior bad act and the crime for which the defendant is accused.")). Here, the State offered the evidence both as evidence of motive and as part and parcel of the clean-up attempt after the murder. The evidence was material and admissible.

The reference to Appellant selling drugs to Mr. Simonelli explained the details of the request Appellant made, *i.e.* holding out a significant carrot to obtain in short order the replacement passenger seat he had requested after the murder, and enticing Mr. Simonelli with more drugs to buy the replacement seat immediately. Thus, the prior drug transactions – which were referenced only briefly and without collateral details, see R. p. 411, lines 24 – were part and parcel of Appellant's request to Mr. Simonelli. Moreover, Mr. Simonelli explained part of the deal was to forgive the past debt and "trade some more cocaine or something like that." (R. p. 412, line 17 – p. 413, line 4). Appellant does not complain that contemporaneous offer to "trade some more cocaine" was improperly admitted. This weaves an even stronger connection to the possible drug turf war theory than the past sales alone. As the trial judge noted, the evidence demonstrated "an undeniable connection" in the precise area (in and round Haven Oaks), and testimony the victim had only just recently begun selling drugs in that area. This allows a

reasonable inference of motive. (See R. p. 389, lines 16-24). Even so, the past sales show an existing relationship which strengths and gives context to the request to purchase the replacement seat where the victim was shot. In short, the testimony was admissible to establish material facts – 1) possible motive; and 2), the fact the seat was replaced due to the victim's blood being in the seat, not mere cosmetic reasons as offered by appellant. *Johnson, supra.*

Further, as the trial judge properly reasoned, the possibility of unfair prejudice did not outweigh the great probative force of the evidence. Cocaine use was already a part of the narrative – Scully testified that he and Appellant used cocaine, and was searching for cocaine the night of the murder. (See R. p. 273, lines 10-15; p. 277, lines 2-9). In fact, Scully testified that the cover story was to be that they "rode around, got high." (R. p. 289, lines 5-17). Further still, the trial judge reasoned that this was a crime with violence not a similarly situated drug charge, which tended to reduce the danger of unfair prejudice. *See, e.g., State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) ("When ... the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced.").

Additionally, Respondent notes Scully's testimony that Appellant also suggested they commit an armed robbery was admitted without objection, and would also bear negatively on character. It is likewise part of the context of the crime, admissible, and is evidence of Appellant then having a gun.

Similarly, because the past drug transactions explain the attempt to pay a current drug debt by helping Appellant to purchase the seat the evidence is admissible as *res gestae*. *Dickerson*, 341 S.C. at 400-401, 535 S.E.2d at 124. *See also State v. King*, 334

S.C. at 512, 514 S.E.2d at 582 ("The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred.").[1]

Even so, had the evidence been admitted in error, it could only be harmless for two distinct reasons. First, the connection to drug use was already a part of the record with Scully's testimony. In this sense, the additional drug testimony was harmlessly cumulative. *See State v. Price*, 368 S.C. 494, 499-500, 629 S.E.2d 363, 366 (2006) (appellant unable to show prejudice where inadmissible hearsay merely cumulative). Second, the record shows overwhelming evidence of guilt, not the least of which is Scully's eyewitness account of the shooting and dumping of the body and gun – testimony that was systematically cooroborated by the forensic and investigative evidence. There is also the fact Appellant replaced the passenger seat, cut out the passenger side seatbelt, and blood was found on the center console dispite the clean up efforts. The evidence is solid, and supportive of guilt; thus, if error in admitting the instant testimony, it could only be harmless. *See Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 589 (2010) ("In order for this Court to reverse petitioner's convictions and sentences, however, we must find that the trial court's error prejudiced petitioner. Since Murdaugh was merely one of six eye witnesses to identify petitioner as the shooter, there were other witnesses whose testimony was consistent with that of the identifying witnesses, and physical evidence linked petitioner in the murder, her testimony was

---

[1] This theory requires "the temporal proximity of the prior bad act ... be closely related to the charged crime." *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 736 (Ct. App. 2014). Respondent notes Mr. Simonelli testified that he had an existing relationship with Appellant as his drug dealer at the time of Appellant's request. (R. p. 413, lines 20-25). This would satisfy the temporal requirement.

merely cumulative to other overwhelming evidence of guilt. As such, reversal is not warranted here.").

However, the record shows the trial judge did not abuse her discretion in allowing the evidence in proof of material facts. Appellant is not entitled to any relief.

II.

The trial judge did not abuse her discretion in admitting into evidence the gun pulled from the river based on the co-defendant's information to officers as to where the murder weapon was discarded, especially where the weapon pulled from the river was consistent with the description of the murder weapon by the co-defendant, the weapon was consistent with the caliber of bullet recovered from the victim's body at autopsy, and the weapon was properly identified as the weapon pulled from the river and secured for ballistic testing and subsequent submission at trial.

Relevant Facts:

Co-defendant David "Scully" White testified Appellant shot the victim in the head while the victim sat in the passenger seat of Appellant's Durango. (R. p. 282, line 14- p. 283, line 1). Scully testified the gun was "a 22 long, long on the muzzle." (R. p. 283, lines 23-25). Before Appellant took Scully home on the night of the murder, and after he had dumped the victim's body in a ditch, Scully testified Appellant stopped at Bacon Bridge Road and "tossed the gun out over the bridge." (R. p. 289, lines 20-23). Scully testified he maintained his exculpatory story out of fear of Appellant until Appellant was arrested: "... when I found out they caught him, I call my attorney" to tell what really happened. (R. p. 300, lines 1-2). (See also R. p. 299, lines 21-24; p. 315, lines 20-21; p. 345 line 24-p. 346, line 1). This included describing where the gun was disgarded. (R. p. 429, lines 16-21). After two dive attempts in the river, officers located a gun matching the description at the location as Scully described. (R. p. 430, line 2 – p. 431, line 4). Scully testified at trial that it appeared to be the same gun used in the murder. (R. p. 284, lines 17-18). After the trial judge sustained an objection on foundation, specifically as to chain of custody, (see R. p. 434, line 1 – p. 437, line 2), the State elicited specific testimony from Detective Greer of how the gun was recovered, its distinctive neon green sight and gold trigger, the beginning of corrosion and a missing

magazine, and how it was transported in a cooler of water to preserve the condition. (R. p. 437, line 23 – p. 440, line 25). Detective Zensen then testified he secured the cooler and transported the cooler to SLED. (R. p. 473, line 13 – p. 475, line 25). The State again offered the gun into evidence. The trial judge admitted the gun as State's Exhibit 14 over Appellant's same objection to foundation. (R. p. 475, lines 18-23).

Ira Parnell, a firearm and tool mark examiner for SLED, testified he received the weapon from officers, extracted it from the cooler, cleaned and examined the weapon. The bullet retrieved from autopsy was too badly damaged to match; however, it was consistent with a twenty-two which was consistent with the ammunition the recovered gun required. (R. p. 374, lines 8-18; p. 612, line 22- p. 614, line 11).

On appeal, Appellant complains the trial judge erred in admitting the weapn as the evidence did not show the weapon was the actual weapon used in the murder. (FBOA, p. 14).

Discussion:

Again, "[t]he [a]dmission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 - 248 (2000) (*citing State v. Huggins*, 325 S.C. 103, 481 S.E.2d 114 (1997)). Appellant argues the judge abused her discretion in admitting the recovered twenty-two caliber long gun because "no *reliable* evidence connect[ed]" the gun to the murder. (FBOA, p. 16) (emphasis added). As a first matter, the argument concedes there was evidence connecting the gun to the murder. Credibility differs from the presence of evidence. Even so, the issue is barred from appellate review as it differs from the objection made below and the ruling on same.

It is well-settled that to preserve an issue for review, the issue must be raised to and ruled upon by the trial judge. *See, e.g., State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Appellant argued lack of foundation, specifically chain of custody:

> Your Honor, there's nothing particularly unique about this weapon. How can she be so sure that that's the same weapon we're talking about. I object. No foundation.

(R. p. 434, lines 1-4).

The trial judge considered lack of foundation, specifically chain of custody:

> ... I would have no concern if there was a serial number identified at the scene where it was found ... I'm a little bit concerned about that. Of course, there hadn't been any kind of chain of custody. I don't even know where it's been kept.

(R. p. 435, lines 9-16).

Appellate argued a failure in the chain of custody. He also argued the evidence from David "Scully" White was insufficient as "he was high on cocaine, freaked out, he was in a dark car" and added the divers had "found another gun inside the lake as well" which was not connected to the case. (R. p. 436, lines 1-12). (See also R. p. 430, lines 17-24). Detective Greer confirmed her testimony was it appeared to be the gun recovered on the second dive. (R. p. 436, lines 22-23). The trial judge ruled, "I need more foundation." (R. p. 436, line 24). Thus, the objection and the ruling was based upon sufficient of the evidence in proof of the chain of custody as to the gun recovered on the scond dive. There was no argument or objection to relevance as in connection to the murder. (See also R. p. 475, lines 18-23, trial judge admitted the gun over Appellant's same objection to foundation). Consequently, Appellant's present argument on connection to the murder is procedurally barred. At any rate, the State presented ample

evidence of the connection to the crime. Appellant's reliance on *State v. Elders*, 386 S.C. 474, 688 S.E.2d 857 (Ct.App. 2010), highlights the flaw in his argument.

The weapon at issue in *Elders* was a distinctive knife described by one of the victims as having "a 'little hump' on it and a blade that was about six to eight inches long. *Elders*, 386 S.C. at 478, 688 S.E.2d at 859. Two days after the carjacking, kidnapping, armed robbery and assault crimes occurred, officers found three pocket knives and a switchblade with bears on the handle in Elders belongings at a friend's home. No witness ever testified any of the knives were similar to the knife used in the crime. This Court noted that "there is considerable evidence in the record demonstrating that the knives were not used in the commission of the crimes," including a negative test for blood. 286 S.C. at 486, 688 S.E.2d at 863 and n. 9.

In contrast, in *State v. Bellue*, the Supreme Court of South Carolina found admissibility of a "gun as one that was in the possession of defendant and one that was the type that could have caused the injury described by the doctor was not error." *State v. Bellue*, 259 S.C. 487, 123,193 S.E.2d 121, 493 (1972). The court reviewed the facts that from the autopsy, it was determined the murder weapon was of small caliber, likely a twenty-two caliber; Bellue was last known person to see murder victim alive; a witness, Kimbrell, testified that Bellue had "a little black pistol" and forced her to drive her car to same area where the victim was found; officers found the pistol in the car Kimbrell abandoned to escape; and an officer who recovered the gun testified the gun admitted was the one recovered from the Kimbrell car. 259 S.C. at 492, 193 S.E.2d at 122. Bellue was arrested in the murder victim's car, which had a missing pin similar to that missing from the recovered gun, and a twenty-two caliber shell. *Id.* Bellue argued the State failed to

connect the specific gun admitted to the murder and the gun was improperly admitted. 259 S.C. at 491, 193 S.E.2d at 122. The Court disagreed:

> It is recognized without citing authority that evidence may be of two kinds, direct and circumstantial. In this case, there was no direct evidence as to the pistol being the murder weapon. The case is based on a chain of circumstantial evidence. ...
>
> ...
>
> The introduction of the gun as one that was in the possession of defendant and one that was the type that could have caused the injury described by the doctor was not error. The circumstances hereinabove described correctly connected the gun to the crime and were for the jury to weigh.

259 S.C. at 492-493, 193 S.E.2d at 122-123.

Likewise, here, the State presented testimony of the witness to the murder, David "Scully" White. He testified that Appellant shot victim with a twenty-two long gun. He was also with Appellant when Appellant threw the murder weapon into the river from Bacon Bridge. The weapon admitted was recovered from that site and shared the same caliber – the caliber having been determined from the bullet retrieved at autopsy. Though Appellant argues that the evidence was not reliable, he merely makes a credibility argument, not an admissibility argument. Moreover, the recovery of the gun at the bridge tends to corroborate the witness testimony. But, at any rate, the weapon was specifically identified as being similar to the one actually used in the shooting. There is no question a gun was used and that the gun used was a twenty-two caliber gun. The mere admission of the gun did not in and of itself cause any unfair prejudice. The fact that because of damage to the bullet, the recovered gun could not be confirmed as the gun used in the murder could just as easily weigh against the State's case. At any rate, evidence that Appellant had a similar gun to that used to kill the victim would be admissible regardless of whether the actual gun used in the murder is recovered. *See State v. Gillian*, 373 S.C.

601, 610, 646 S.E.2d 872, 877 (2007) ("The burglary evidence was presented in an effort to show the identity of the perpetrator by showing that petitioner was in possession of a stolen gun that was consistent with the type of weapon used to kill the victim."); *State v. Pruitt*, 260 S.C. 396, 401, 196 S.E.2d 107, 109 (1973) ("The murder weapon was never discovered but there was evidence to the effect that appellant had upon him the night of the murder a pistol other than the one he gave the law enforcement officers; that on the afternoon before the murder he had obtained by purchase a package of bullets, which did not fit the gun he gave to the officers, but which were similar to the one offered in evidence, and scientific tests showed that the composition of the bullet offered in evidence was similar to the composition of the slugs found in the bodies of the two victims.").

Further, the jury was well aware of the limitations of the forensic evidence, *i.e.* the inability to specifically connect the gun to the bullet due to the condition of the bullet. Thus, like the weapon in *Bellue*, "[t]he circumstances hereinabove described correctly connected the gun to the crime and were for the jury to weigh." 259 S.C. at 493, 193 S.E.2d at 123. However, should this Court find error in the admission of the weapon, it could only be harmless given the fact that Scully had previously identified, without objection, State's Exhibit 18 as appearing to be the weapon used. He testified about the caliber and characteristics. If nothing else, the gun sufficed as a demonstrative aid to the testimony. Thus, any prejudice was minimal. Moreover, the evidence is overwhelming and any error harmless. This would include the eyewitness account of the shooting, description of the specific gun used, and his testimony concerning the dumping of the body and gun – testimony that was systematically corroborated by the forensic and

investigative evidence. There is also the fact Appellant replaced the passenger seat, cut out the passenger side seatbelt, and blood was found on the center console dispite the clean up efforts. The evidence is solid, and supportive of guilt; thus, if error in admitting the instant testimony, it could only be harmless. *See Wilder v. State, supra.*

However, the record fully and fairly supports that the issue presented is different than the issue raised below and is procedurally barred from review. *Dunbar, supra.* Even so, the trial judge did not abuse her discretion in admitting the gun. Appellant is not entitled to any relief.

III.

The trial judge did not abuse her discretion in denying Appellant's motion to suppress based on incorrect information in the search warrant where Appellant's only actual argument of incorrect fact in regard to the assertion of a purchase was simply an incorrect date. Appellant's argument that the facts of purchase of a replacement seat as supported by the witness statements were ultimately not supported by documentation as invalidating the warrant is against precedent.

Relevant Facts:

Appellant's Dodge Durango was searched pursuant to a warrant on September 27, 2007. (R. p. 458, lines 4-9). At that time, investigators were aware that Appellant had switched out the passenger seat; however, the car was still searched for any other evidence of the murder. (R. p. 460, lines 9-12). Detective Jamie Zensen testified that he determined that the passenger side seat belt had been cut and removed. (R. p. 463, lines 5-11). She was not able to process the passenger seat for evidence of the murder because the seat had been replaced. (R. p. 465, lines 17-21). Similarly, she was not able to process the seat belt as it had been completely removed "cut all the way down to the retractor." (R. p. 465, line 22 – 466, line 2). Detective Zensen testified, from review of the victim's body when found, the victim had blood down his back, and such blood would likely transfer to a seat if he was seating in the seat at the time. (R. p. 472, lines 3-10). Nine swabs were ultimately taken, two tested positive for blood. (R. p. 502, lines 12-20). The two swabs tested as blood were from the center counsel. (R. p. 533, lines 8-18). However, the amount was insufficient to perform DNA testing. (R. p. 502, lines 14-18).

Officers had originally obtained a warrant and searched the vehicle on September 17, 2007. No evidence was noted at that time. However, upon further investigation,

Detective Giglio determined that Appellant had called various auto parts and auto services businesses on September 14, 2007, the day after the murder. (R. p. 546, lines 3-10). This included a call to LKQ Automotive. (R. p. 547, lines 10-15). With the additional information about the replacement seat, Detective Giglio obtained the second warrant. (R. p. 554, lines 7-22). When notified of the second search warrant, Appellant reacted – and interrupted the reading of the warrant – upon learning about the information concerning a purchased replacement seat shortly after the murder. (R. p. 556, lines 6-8). When asked if he wanted to explain, Appellant declined to speak with the officer. (R. p. 556, lines 18-20). Detective Giglio testified at trial that he was then able to match the serial number of the replacement seat to the passenger seat in Appellant's vehicle. (R. p. 548, lines 11-24).

In pre-trial motions, Appellant moved to suppress the evidence from the September 26, 2007 search arguing the assertion, "Officers obtained verbal and written statements that Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on 9/14/07," was false. (R. p. 138, line 10- p. 140, line 5). Detective Giglio testified officers had "received a sales quote form the LKQ Auto Parts" and a "written statement from a Mr. Richard Johns on 9/26/2007, who stated [Appellant] came in to purchase the seat and the next day you came back and paid cash." (R. p. 143, line 23- p. 144, line 1; p. 151, lines 6-16). Another statement of George Gallardo of LKQ, also taken September 26, 2007, reflected he "pulled" the requested replacement seat for Appellant on Friday, September 14, 2007. (R. p. 145, lines 9-23). However, upon further investigation, officers "weren't able to confirm a lawful purchase had occurred," though the attempt was noted on September 15, 2007. (R. p. 152, line 16-p. 153, line 8; p. 157,

lines 12-14). Dectective Giglio testified that the "original thought" after talking to LKQ personnel was that Appellant had purchased the seat; however, there was some later confusion whether it was purchased or stolen. (R. p. 162, lines 2-13; p. 164, lines 6-17). Even so, the detective acknowledged the initial request for the part on the 14th did not result in a "final purchase," nor did the credit card attempt (which was declined) on the 15th and to that extent, the affidavit reflects a clerical error. (R. p. 166, lines 2-12).

The trial judge found the allegations in the affidavit support probable cause for the warrant. She specifically found the officers did not act "in bad faith or recklessly," but relied upon information from interviews with LKQ personnel. (R. p. 169, lines 14-21). Whether purchase or theft, "the officers were intending to tell the magistrate ... that based on their interviews they had probable cause" to search the vehicle again based upon the information on the replacement seat, though the information received ultimately lacked clarity as to the actual purchase. (R. p. 169, line 24 – p. 170, line 10). She denied the motion to suppress. (R. p. 170, lines 11-15).

Appellant argues the trial judge abused her discretion in failing to grant the motion to suppress where the facts support "[i]t is likely Detective Giglio either intentionally or recklessly made the statement that appellant purchases a new front passenger seat on September 14, 2007, when he knew or should have known through investigation that the information was false." (FBOA, p. 21).

Discussion:

Appellant suggests a position rejected in 1975 in *State v. Sachs*: "Mere error in the facts relied upon does not offend the protection sought to be achieved by the warrant requirement." *State v. Sachs*, 264 S.C. 541, 556, 216 S.E.2d 501, 509 (1975). The Court

eschewed the notion to the contrary reasoning "[h]indsight invalidation of the warrant would be incompatible with the legitmate demands of law enforcement." *Id.*

Detective Giglio in the pre-trial hearing reviewed the statements supporting the affidavit in detail. In particular, he reviewed the statement of Mr. Johns who indicated an attempt was made on the 14th when a card was decline, and "customer came back the next day and paid cash." (R. p. 151, lines 6-16). The second statement indicated that nothing was actually purchased. (R. p. 151, lines 17-20). However, Detective Giglio did not know there was a "clerical" error concerning the dates 9/14 and 9/15, (R. p. 157, lines 8-24; 165, line 24 – p. 166, line 4); and had confirmation from a photograph from the first search that the seat – whether purchased or obtained otherwise – was in Appellant's vehicle, (R. p. 166, lines 21 – p. 167, line 16). The fact the first statement by Mr. Johns was factually inaccurate as to actual purchase falls specifically in line with the caution in *Sachs* that the eventual disproof of the facts does not invalidate the warrant. The facts neither show an intentional assertion of a known false fact nor recklessness in making such assertion. At any rate, the probable cause was not the purchase (or theft) of the seat but possession of the seat. That was a fact that Appellant could not deny. The actual method of possession was never fully uncovered, but, again, the actual possession was firmly established.[2] Thus, probable cause is shown. *See generally State v. Sullivan*, 267

---

[2] The evidence certainly supports the trial judge's ruling that the officers acted in good faith. They depended on statements from LKQ personnel, the pulled parts from the junk Durango, and cell phone records to confirm contact between Appellant and LKQ. (See R. p. 143, line 23 – p. 145, line 23; p. 151, lines 6-16; p. 547, line 10- p. 548, line 10). *See Davis v. United States*, ___ U.S. ___, 131 S.Ct. 2419, 2427 -2428 (2011) (affirming continued application of "good faith exception," reasoning: "When the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs ... But when the police act with an objectively 'reasonable good-faith belief' that their

S.C. 610, 617, 230 S.E.2d 621, 624 (1976) ("Search warrants are constitutionally preferred and in determining whether they should issue, magistrates are concerned with probabilities and not certainties. .... specific [information] by a reliable citizen viewed in a common sense fashion establishes probable cause for the issuance of the warrant.").

Appellant is not entitled to any relief.

---

conduct is lawful, ... or when their conduct involves only simple, 'isolated' negligence, ..., the ' " deterrence rationale loses much of its force," ' and exclusion cannot 'pay its way.'"). This Court has also underscored: "the court may not order suppression simply because the officer made a false statement in, or omitted key facts from, an affidavit supporting a search warrant" rather, the appellant must show the statements were material and affected the finding of probable cause. *State v. Robinson*, 408 S.C. 268, 274, 758 S.E.2d 725, 728 (Ct.App. 2014). Again, the officers relied on information received from the auto parts personnel which support probable cause. Further, the key fact is Appellant's looking for and obtaining, by whatever means, the replacement seat shortly after the murder. The date of purchase, if any, is less important than the fact of looking for and obtaining the replacement seat. If anything, Petitioner points to an incorrect fact of no consequence. Again, he is not entitled to any relief.

IV.

The trial judge did not abuse her discretion in disallowing cross-examination concerning testing of a gun in another matter that could not have been the murder weapon in this case given there was neither a nexus to the crime nor proper point of impeachment to be made based on same.

Relevant Facts:

Detective Zensen testified that she worked as a crime scene technician in the case. On cross-examination, Appellant asked about multiple items submitted for DNA testing, particularly questioning the detective at length concerning samples taken from Appellant's Durango. (See R. p. 498, line 11 – p. 506, line 13; p. 510, line 2 – p. 515, line 25). Appellant then asked about a January 7, 2008 request for testing on a .25 automatic handgun. (R. p. 516, lines 3-5). The detective originally began to answer concerning the .22 handgun recovered from the river, but Appellant corrected the witness to focus on a question about another weapon, "a 25 automatic handgun found on another person...." (R. p. 516, line 25 – p. 517, line 1). The State objected as to relevance and the trial judge heard argument outside the presence of the jury.

The trial judge reviewed the SLED report relied upon by Applicant to suggest that the detective had anwered incorrectly – that there was in fact another gun submitted to be tested for the victim's DNA. However, the report did not support that assertion. The trial judge found the report did not support any connection to the instant case – the report reflected a separate SLED case number, and the gun tested was a different caliber "semi-automatic pistol which could not fire the bullet that was removed from the body of this alleged victim." She declined to allow impeachment finding, "I don't know what the relevance is." (R. p. 521, line 8 – p. 529, line 4).

Appellant argues the trial court erred in not allowing him to address the inaccurate statement that another weapon was not submitted when investigators actually had submitted another weapon "as being involved in the murder." (FBOA, p. 26). Further, he argues "[t]he fact that law enforcement was investigating a second weapon indicated that officers from the Dorchester County Sheriff's Office were not firmly convinced that the gun recovered from the Ashley River was the murder weapon and that the officers considered that someone else may have been involved in the murder." (FBOA, p. 26).

Discussion:

"The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers." *State v. Aleksey*, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000). However, " 'trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.' " *Id*, 343 S.C. at 34, 538 S.E.2d at 255 (*quoting Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)). "An appellate court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion." *State v. Johnson*, 338 S.C. 114, 124-125, 525 S.E.2d 519, 524 (2000).

"Although the Confrontation Clause 'tips the scales' in favor of permitting cross-examination if it could reasonably be expected to have an effect on the jury, a court may prohibit cross-examination for impeachment purposes when the probative value of the

evidence that the defendant seeks to elicit is substantially outweighed by the risk of prejudice." *State v. Boiter*, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). "A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." *State v. Gillian*, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004).

As a first matter, Appellant fails to show a false statement to correct. Detective Zensen testified concerning the weapon that was recovered and was tested in regard to the bullet recovered from autopsy, but not that it was "sent in" for some type of DNA testing to the victim. (R. p. 516, lines 13-17). Her focus was rightfully on the instant case. (See also R. p. 515, lines 12-25). As the trial judge found, the separate gun Appellant wanted to question the detective about was not submitted with the same SLED case number, could not have involved in the murder as it was a different caliber, and Appellant failed to show any connection in investigation or personal knowledge for the request. (R. p. 521, line 8 – p. 522, line 24; p. 523, line 21 – p. 524, line 25; p. 527, line 24-p. 529, line 4). The trial judge reasonably found on these facts that Appellant's inquiry simply did not reflect fair impeachment. (R. p. 523, line 21-p. 524, line 16). Thus, there was neither an incorrect fact nor a basis to show bias or impartial – the general points to impeach a witness upon. *See Gillian*, 360 S.C. at 450, 602 S.E.2d at 71 ("On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.").

As to the argument there is a defense to be offered because investigators continued to investigate matters related to the victim, that does not show some fact of bias or dishonesty necessitating cross-examination on same. *See State v. Saltz*, 346 S.C. 114, 132, 551 S.E.2d 240, 250 (2001) ("Appellant sought to ask Mengedoht what she would do 'if she had to make a choice between being loyal to her friend and ***protecting*** her son.' This question did not seek to elicit a **fact** tending to show bias.") (emphasis in original). It certainly would not constitute proper third party guilt evidence. *See State v. Gregory*, 198 S.C. 98, 104, 16 S.E.2d 532, 534 (1941) ("[E]vidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (internal quotation marks omitted)). Further, Appellant did not establish that officers, particularly this officer, continued to investigate the murder. (See R. p. 524, lines 4-10). It could only work to inject irrelevant and confusing matter into the trial of the case. Thus, the testing of an unrelated gun, that could not have been the murder weapon, in a separate submission with a separate SLED number is too tenuous to constitute necessary cross-examination. The trial judge correctly found same would be inadmissible. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....").

Thus, the trial judge did not abuse her discretion in limiting cross-examination on this irrelevant subject. Appellant is not entitled to any relief.

V.

The record fully and fairly supports the trial judge's finding of a knowing and intelligent waiver of the right to counsel after inquiry on the understanding of the dangers and disadvantages of self-representation.

Relevant Facts:

Appellant requested to represent himself at a February 11, 2011 pre-trial hearing:

> Your Honor, I would like to assert my constitutional right to self-representation. I'm aware of the disadvantages and dangers of that. I am of sound mind. I'm very—I'm—I know clearly the decision I am making.
>
> I don't want to waste the Court's time arguing the conflicts and issues that me and Mr. Loy have together. I would like to proceed pro se as of this day February 11, 2011.

(R. p. 7, lines 11-19).

The trial judge thereafter questioned Appellant regarding his decision. The trial judge first asked about his charge, which Appellant acknowledged was murder. He also acknowledged a separate murder charge in Berkeley County and that he was also representing himself on that charge. (R. p. 9, lines 4-11). The trial judge questioned Appellant to ensure he was not seeking to represent himself to interpose a delay. Appellant confirmed his case had not at that time been scheduled for trial, and he was not seeking to delay the trial by the request. (R. p. 10, lines 3-10).

The trial judge then gathered background and personal information from Appellant, such as Appellant's age which he reported as thirty-one; that he was married with four children; had worked for Sonic before incarceration; had one year of college; had a military background including additional college credits; "Did 10 months in Afghanistan in the army, was trained in fuel and ammo provisions; and stayed in the Army until discharged for injury. (R. p. 11, line 11 – p. 15, line 25). Upon release,

Appellant worked with "trucks and heavy machinery" including "semi-trucks; Charleston Portable Storage, the pods... Cranes, factories" driving or working on heavy equipment. (R. p. 16, line 18 – p. 19, line 4). He left because of the work hours which caused him to drive in the early morning hours after a twelve-hour shift and he "could possibly wreck...." (R. p. 19, lines 8-17). After leaving his job, he was arrested for murder in Dorchester County. (R. p. 19, lines 22-23). He bonded out and worked in the fast food industry and was then charged with the murder in Berkeley County. (R. p. 20, line 4 – p. 21, line 6). He did not bond out again. (R. p. 21, lines 7-10). Judge Goodstein found his work history and education to be "exceptional." (R. p. 21, lines 11-12). Appellant denied any mental health treat (including specifically post-traumatic stress syndrome), and denied treatment for alcohol or drug abuse. (R. p. 21, lines 14-18). Judge Goodstein advised not only did Appellant have the constitutional right to counsel but that "there's a benefit to counsel." (R. p. 21, lines 22-25). She cautioned he was facing murder with a sentence of thirty years to life, and explained in terms of his prior work experience, going to trial without counsel would be akin to having the judge operate a crane with "15,000 and 60, 000 pounds of steel" simply because the judge is reasonably bright. Appellant admitted, "I would go nowhere near you." (R. p. 22, lines 12-23). The judge noted the danger in both situations: It is the exact same thing. Practice of law is an art.... People go to school and they train ... it takes experience, and there's a langague to it." (R. p. 23, lines 13-18). She praised then counsel, Mr. Loy, his skill and knowledge, which Appellant acknowledged. (R. p. 23, line 19-p. 24, line 13; p. 26, line 12 – p. 27, line 12). The trial judge then cautioned that he would need to develop defenses, and "you've got to have somebody who has the capacity to do that ... which is another reason why it's

important and - - and why you put yourself in danger by not having a lawyer represent you." (R. p. 28, lines 11-18). Judge Goodstein noted, without going into facts or the "relationship between the Berkeley County allegations and the Dorchester County allegations," that she could advise "that having two allegations and –and two murders in two counties is not helpful." (R. p. 29, lines 1-8). She plainly advised "I know that the overlay of that's not good" and he was at "risk in representing yourself with regard to one murder charge, having two of them has got to make that even more risky and even more problematic exponentially. It's got to." (R. p. 29, lines 11-21). She advised him he would have to comply with the rules of evidence and the court rules. (R. p. 32, lines 11-18). The trial judge found:

> You're obviously very bright. You're obviously highly educated. Your work background is superior. I mean there's—as I go through my notes and I go through the case law, unfortunately, I...would really like to say, 'I'm sorry, Mr. Chisolm, but you can't represent yourself.'...Because I know what kind of risk you put yourself in. But our constitution gives you that right."

(R. p. 33, line 15-p. 34, line 1).

She stated, after reviewing again his understanding of the charges, his work history and Army experience:

> ... I must tell you...I'm convinced that you are aware of it. I—I think that your waiver is being made understanding what—what you're doing.
>
> You know, I wouldn't say it's not been intelligently made, but you're an intelligent man and you're making the decision. And I think you're doing that with your eyes open.
>
> I don't think I understand the "why" part of it. I think I don't like it. But that—the judge's pleasure with it is—doesn't get to be factored in...
>
> I think you're knowing—you know what you're doing. You're intelligent. There isn't any evidence of any kind of mental illness or any sort of incompetency at all on your part. I –I can find no reason to disallow you to—to self-represent yourself....

(R. p. 35, lines 3-18).

The judge also advised that if he changes his mind, he should not hesitate to file a motion to appoint counsel. (R. p. 36, lines 16-22). He apparently requested Mr. Loy to remain as standby counsel. (R. p. 37, lines 10-11).

On July 14, 2011, Appellant appeared before Judge Goodstein again in pre-trial. Mr. Loy was present as standby counsel. (R. p. 40[cover page]). The judge heard the State's discovery procedures for the *pro se* defendant, and Appellant requested "the disc file" so he could use a computer for review in addition to print outs. (R. p. 41, line 8 – p. 44, line 21). He requested help in issuing subpoenas, and the trial judge assured him he would have the necessary subpoenas for trial. (R. p. 48, line 11 – p. 50, line 21). At the conclusion of the discovery discussion, the trial judge reminded Appellant discovery was then on-going, and encouraged him to utilize Mr. Loy when he "need[ed] to get messages around...." (R. p. 66, lines 14-23).

On July 22, 2011, Appellant appeared again before Judge Goodstein and reported his subpoena issue had been solved. (R. p. 73 line 3 – p. 74, line 10). The parties discussed additional discovery at that time.

Appellant's case was originally called to trial on August 22-23, 2011, before the Honorable Edgar W. Dickson. Appellant represented himself. Mr. Loy was standby counsel. (R. p. 86[cover page]). Appellant moved for a mistrial based on an answer received from a prosecution witness during cross-examination, which was ultimately granted. (R. p. 116, line 3 – p. 131, line 16).

Prior to the mistrial, he had moved and argued to suppress evidence from the search warrant. (R. p. 87, line 7 – p. 95, line 13). He questioned Dectective Giglio *in*

camera on same. (R. p. 96, line 16 – p. 108, line 6). He also participated in selection of the jury, requested specific *voir dire*, and expressed concern over "potential media coverage of my case" as having "a profound affect on the jury's ability to presume innocence." (R. p. 109, lines 21-23; p. 110, line 23 – p. 111, line 24). He also presented an opening statement, (R. p. 112, line 25 – p. 115, line 18).

Appellant complains, however, his waiver was not knowing and voluntary as he was only vaguely advised of the dangers and disadvantages of self-representation. (FBOA, p. 29). He further complains that though the judge referenced the rules of evidence, there were not concrete examples of same. (FBOA, p. 30). He suggests the trial judge should have explored the "friction" between Appellant and Mr. Loy. (FBOA, p. 30). Lastly, he suggests that the trial judge did not advise the murder conviction could be used to establish an aggravating circumstance to seek the death penalty in his other pending murder case. (FBOA, p. 30).

Discussion:

It is has long been established that a defendant may choose to waive his right to counsel and represent himself, as long as the waiver is "knowingly and intelligently" made. *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525 (1975) (*citing Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019 (1938) ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.")). "Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open." *Id*, 422 U.S. at 835 (citations

omitted). "[I]t is the trial judge's responsibility to determine whether there is or is not an intelligent and competent waiver." *State v. Dixon,* 269 S.C. 107, 236 S.E.2d 419 (1977) (*citing Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019 (1938)). Only "[i]f the trial judge ***fails*** to address the disadvantages of appearing *pro se,* as required by the second prong of *Faretta,*" will the reviewing court "look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002) (*quoting Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990)(emphasis added)). *See also Stevenson v. State*, 337 S.C. 23, 26, 522 S.E.2d 343, 344 (1999)(noting before reviewing record as a whole that "no one specifically informed petitioner of the dangers and disadvantages of proceeding *pro se.*"); *Salley v. State*, 306 S.C. 213, 215-216, 410 S.E.2d 921, 922 (1991)("Because the hearing judge posed no specific questions to determine whether petitioner was aware of the dangers of self-representation, we have reviewed the record to ascertain whether petitioner had sufficient background or was apprised of her rights by some other source so as to be aware of the dangers of self-representation."); *Wroten v. State*, 301 S.C. 293, 294-295, 391 S.E.2d 575, 576 (1990)("trial judge made no specific inquiry to determine whether petitioner made his choice to proceed *pro se* 'with eyes open.' We therefore look to the record"); *Ex parte Jackson*, 381 S.C. 253, 260, 672 S.E.2d 585, 588 (Ct. App. 2009)("If the trial court fails to address the disadvantages of appearing pro se, this Court will examine the record to determine whether the accused had sufficient background or was apprised of his rights by some other source."); *State v. Bryant*, 383 S.C. 410, 415, 680 S.E.2d 11, 13 (Ct. App. 2009)("when the trial court fails to expressly make this

inquiry, this court will examine the record to determine whether the accused had sufficient background or was apprised of her rights by some other source.").

Here, the record reflects continuing and lengthy discussions between Judge Goodstein and Appellant, referencing not only the right to counsel, but specifically its value. Judge Goodstein cautioned Appellant about the need for experience and training to grasp the art of representation and to present relevant defenses. In short, Judge Goodstein fully and fairly advised appellant on the dangers and disadvantages of self-representation at the February 2011 pre-trial hearing. Certainly, "it is the trial judge's responsibility to determine whether there is or is not an intelligent and competent waiver." *State v. Dixon,* 269 S.C. 107, 236 S.E.2d 419 (1977) (*citing Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019 (1938)). Judge Goodstein more than fulfilled her responsibility to determine whether Appellant's waiver was intelligent and competent. Judge Goodstein questioned Appellant, relating the danger to his own experiences to underscore the significant risk he ran in chosing self-representation. Further, she advised the danger was increased because of the second murder charge.

Even so, Appellant argues his case is much like the defendant in *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596 (2010). (FBOA, p. 31). However, in *Winkler,* the Supreme Court found the request was too late to be effective, certainly not the case here. See 388 S.C. at 587, 698 S.E.2d at 587. At any rate, by footnote, the Court concluded "the record reflects the trial judge met the *Faretta* standard by adequately warning Appellant of the dangers of self-representation." *Id* at n. 6. Appellant's reliance on *Winkler* is misplaced.

To the extent he argues a more formal and structured inquiry is necessary, precedent is against him. Simply, there is no established and required verbatim script which must be followed to adequately advise a defendant of the dangers and disadvantages. Indeed, the United States Supreme Court has determined that there is no constitutionally mandated colloquy that a trial judge must engage in to sufficiently advise a defendant of the dangers of self-representation:

> We have described a waiver of counsel as intelligent when the defendant "knows what he is doing and his choice is made with eyes open." We have not, however, prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election, our decisions indicate, will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.

Iowa v. Tovar, 541 U.S. 77, 88, 124 S.Ct. 1379 (2004)(citations omitted).

Thus, it is well settled, and accepted, that no particular questions must be asked. See Am.Jur. Crim.Law § 1153 ("Where advice or admonition from the court to the defendant is undertaken to establish a valid waiver by the defendant of the right to the assistance of counsel, no particular cautionary instruction or form is required to ensure the validity of the waiver."). *See also Dallio v. Spitzer*, 343 F.3d 553, 563 (2nd Cir. 2003) (noting "our court has strongly endorsed *Faretta* warnings as a factor important to the knowing and intelligent waiver of counsel" but "also rejected rigid waiver formulas or scripted procedures"); *United States v. Davis*, 269 F.3d 514, 519 (5th Cir. 2001) ("we require no sacrosanct litany for warning defendants against waiving the right to counsel. Depending on the circumstances of the individual case, the district court must exercise its discretion in determining the precise nature of the warning."). The Court, however, did provide some guidance in *Tovar* expressing the "pragmatic approach" that "what purpose

a lawyer could serve," and "what assistance he could provide to an accused at" the relevant stage of the trial should be considered to determine the scope of the advice needed. *Tovar*, 541 U.S. at 90. Exact verbiage, though, has never been mandated. *Id.*

Even where a court has devised loose guidelines, such a court specifically sets out that no particular language is necessary. For example, in *United States v. Hayes*, 231 F.3d 1132 (9th Cir. 2000), the Ninth Circuit cautioned before their guidance:

> We do not intend to set forth what would be a minimum explanation to meet the "dangers and disadvantages" demands of *Faretta.* Having said this, we believe that the necessary explanation need not be lengthy or pedantic; it should not be as complex and rigid as is now required in the taking of a guilty plea. There is no required formula. For example, and for the sole purpose of giving guidance to the district courts, we believe that the following illustrative discussion comports with *Faretta*'s requirements.

231 F.3d at 1138.

The Court of Appeals then advised that the following language could be used to sufficiently warn a defendant about the dangers of self-representation:

> The court will now tell you about some of the dangers and disadvantages of representing yourself. You will have to abide by the same rules in court as lawyers do. Even if you make mistakes, you will be given no special privileges or benefits, and the judge will not help you. The government is represented by a trained, skilled prosecutor who is experienced in criminal law and court procedures. Unlike the prosecutor you will face in this case, you will be exposed to the dangers and disadvantages of not knowing the complexities of jury selection, what constitutes a permissible opening statement to the jury, what is admissible evidence, what is appropriate direct and cross examination of witnesses, what motions you must make and when to make them during the trial to permit you to make post-trial motions and protect your rights on appeal, and what constitutes appropriate closing argument to the jury.

Id at 1138-1139.

The Court then concluded: "we emphasize that the foregoing formula is not required to be used verbatim." *Id* at 1139. *See also State v. Watson*, 900 A.2d 702, 710 -

711 (Me. 2006)(referencing a compilation of other jurisdictions' general guides and rejecting "a rigid formula for determining whether a defendant was adequately informed of the risks of proceeding to trial without representation"). This precedent is consistent with our well-settled notion that "the ultimate test is not the trial judge's advice but rather the defendant's understanding." *Wroten*, 301 S.C. at 294, 391 S.E.2d 575. *See also State v. McLauren*, 349 S.C. 488, 494, 563 S.E.2d 346, 349 (Ct.App. 2002). Thus, the key in review of such advice is whether the dangers and disadvantages of self-representation are explained in such a manner that a defendant may understand.

Here, Judge Goodstein took extra effort to explain the dangers and disadvantages of self-representation in such a manner that Appellant would understand. On two separate occasions during the hearing, she related Appellant's decision to his prior work history and experience in the military. (R. p. 22, line 12- p. 23, line 15; p. 30, lines 2-13).

At any rate, if the advice is not sufficient, the reviewing court would look to the record to determine if the waiver was sufficient.[3] *State v. Thompson*, 355 S.C. 255, 262, 584 S.E.2d 131, 135 (Ct. App. 2003) ("If the trial [court] fails to address the disadvantages of appearing pro se, as required by the second prong of *Faretta*, [the reviewing court] will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." (internal quotation marks omitted)); *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App.1992) ("Factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation include: (1) the

[3] Respondent notes again that our courts have only resorted to such analysis if there is an "absolute failure" to inquire of the defendant. *Gardner*, 351 S.C. at 412, 570 S.E.2d at 186. That cannot be fairly argued to be the case here.

accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment.").

In taking the factors in order, there is evidence supportive of finding a sufficient waiver: 1) Appellant was in his thirties with college education and military experience and no evidence of mental or physical ill health; 2) he had been previously involved in the trial that resulted in a mistrial and had also been involved to some extent with representing himself in his other murder charge; 3) he certainly understood he was being tried for murder and knew he faced on this first charge a sentence of thirty years to life; 4) he was represented by Mr. Loy prior to his decision to represent himself and requested Mr. Loy remain as standby counsel (Appellant's present argument aside, there appeared to be no difficulties evident in record between the two, and Appellant often consulted with Mr. Loy, see for example, R. p. 231, line 23; p. 232, line 25; p. 233, line 8; p. 234, line 19); 5) he did not appear to be delaying the proceedings; 6) he not only was appointed standby counsel, but consulted with standby counsel; 7) the judge advised him

he would have to abide by the rules of court and he confirmed he understood; 8) he did not discuss legal or factual defenses but was advised that counsel would be charged with presenting defenses, and defense would be important in the representation; 9) the conversation was tailored specifically to Appellant; and 10) there was no evidence of "coercion or mistreatment" prompting the waiver. Thus, should the Court review the record under these facts, the record well and fully supports a knowing and intelligent waiver.

However, the trial judge carefully reviewed the dangers and disadvantages with Appellant. Morevoer, she encouraged him to change his mind and request counsel. He never did so, even while he appeared before the same judge two additional times in pre-trial, and also had a trial run at self-representation in the August trial that resulted in a mistrial. He was given an opportunity to change his mind, and experiences to know what would be expected of him. Appellant stood firm in his choice. Appellant has failed to show error in regard to the waiver. He is not entitled to any relief.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

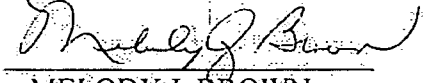
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 
MELODY J. BROWN
S.C. Bar No. 14244

Office of the Attorney General
Post office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

February 5, 2015.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Don-Survi Chisolm, Appellant.

Appellate Case No. 2011-200186

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244

Office of the Attorney General
Post office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

February 5, 2015.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane Schafer Goodstein, Circuit Court Judge

The State, Respondent,

v.

Don-Survi Chisolm, Appellant.

Appellate Case No. 2011-200186

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing two (2) copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

This 5th day February, 2015.

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305