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VOLUME THREE OF FOUR VOLUMES

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

RECORD ON APPEAL

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Jury qualification -- Number 286

1 Thank you, Mr. Blanchard.

2 (Letter from Juror Number 29 marked Court's Exhibit
3 Number Six.)

4 THE COURT: All right. Let the record reflect that
5 Juror Number 130, Diane Howard, is qualified to serve as a
6 potential juror in this case pursuant to Section 16-320 of
7 our code.

8 286, Rebecca Weaver.

9 JUROR NUMBER 286, REBECCA B.

10 WEAVER, having been first duly sworn, was voir dired as
11 follows:

12 EXAMINATION BY THE COURT

13 Q Good morning. You are Rebecca B. Weaver, correct?

14 A That's correct.

15 Q And, Ms. Weaver, you understand that you are under oath
16 here today.

17 A Right.

18 Q And you also recall that when I dismissed you and your
19 fellow jurors on Monday that I gave you instructions that
20 you were not to discuss this case with anyone, that if
21 anyone attempt to contact you, that you were to report that
22 to me; and also that you were not to read, watch or listen
23 to any news accounts concerning this case. Have there been
24 any violations of my instructions?

25 A No, sir.

1 Q Ms. Weaver, over the next few minutes I'm going to ask
2 you some questions. Thereafter one of the defense lawyers
3 and then one of the solicitors will ask you some questions
4 also.

5 I want you to please keep in mind that we're not in any
6 way attempting to invade your privacy, but due to the nature
7 of the proceedings that we are about this week it's
8 extremely necessary that certain questions are asked and
9 answered.

10 Keep in mind that there are no right or wrong answers
11 to these questions. If you would, just answer them openly
12 and honestly and fully.

13 Also, keep in mind that no one is challenging your
14 view. It's simply that we need to know what your views are
15 in some areas.

16 Also, I would tell you to listen very carefully to
17 these questions. If you ever need to have a question
18 repeated, clarified, whatever, you let me or the lawyer
19 asking the question know, and we will try to accommodate
20 you.

21 Also, it's important that you pay close attention to
22 these questions, because we are probably going to be asking
23 you about some things, about some things, that you have
24 never considered prior to coming to court here this week.

25 I would also tell you that the lawyers and I have

1 copies of your juror information sheet, because that was
2 very important to us in preparing for this morning's
3 session.

4 Now, among the things that we're going to be talking
5 about, Ms. Weaver, will include reference or references to
6 the word penalty. But the mere fact that I even mention
7 that word or that we use that word in no way indicates
8 anything about the defendant, Mr. Moore. He is presumed in
9 the law to be innocent. Do you understand that?

10 A Yes, I do.

11 Q Now, let's assume that you were a juror in a criminal
12 case. Could you listen to the law, accept and apply that
13 law as I would instruct you as the judge of this Court even
14 though you may disagree with that law that I instructed or
15 think that it ought to be some other way?

16 A Yes, I could.

17 Q Could you decide this case based solely on the evidence
18 presented here in this courtroom and regard anything that
19 you may have heard, read or seen about the case?

20 A Yes, I could.

21 Q Now, in a criminal case, Ms. Weaver, the state has the
22 burden of proving guilt. And the burden of proof for the
23 state is proof beyond a reasonable doubt.

24 A defendant has absolutely no burden, no responsibility
25 to prove his innocence. Do you understand that legal

1 principle?

2 A Yes, I do.

3 Q Could you, depending on the facts and evidence and the
4 law as I would instruct you in a particular case, find a
5 defendant either guilty or not guilty?

6 A Yes, sir, I could.

7 Q Now, as you know from being here with the entire jury
8 panel on Monday, this is a case in which the State of South
9 Carolina is seeking the south penalty. And, as such, we're
10 going to be engaged in what we call a bifurcated proceeding,
11 a bifurcated trial, which simply means that it's divided
12 into two parts.

13 If you were a juror in such a case and if the jury
14 found the defendant not guilty of murder in the first phase,
15 the guilt phase, do you understand that that trial would end
16 then?

17 A Oh, yes.

18 Q However, if you were a juror in such a case and if the
19 jury had found the defendant guilty of murder, do you
20 understand that you would then move to the second or
21 sentencing phase of that trial?

22 A Right.

23 Q In that phase of the trial, Ms. Weaver, evidence would
24 be presented to the jury in the form of aggravating
25 circumstances, as well as mitigating circumstances.

1 Now, aggravating circumstances are facts, incidents,
2 details or occurrences which our state legislature, the
3 General Assembly in Columbia, has declared by law would make
4 worse, that to aggravate, the crime of murder.

5 In other words, the presence of an aggravating
6 circumstance when it goes along with or accompanies a murder
7 increases the enormity or adds to the injury of that crime.
8 It's a murder committed in the commission of or in
9 connection with another crime or incident. Do you
10 understand that?

11 A Yes, sir, I do.

12 Q Now, mitigating circumstances are also incidents,
13 details or occurrences which our state legislature has, once
14 again, declared by law would reduce the severity of the
15 offense of murder and may be considered by the jury as
16 extenuating or as reducing the degree of moral culpability
17 or responsibility for the crime of murder. Do you
18 understand that?

19 A Yes, I do.

20 Q Now, if you were a juror in that situation, I am
21 talking about the second phase, the sentencing phase, of a
22 death penalty case, could you, depending upon the particular
23 facts and circumstances of that case, including the
24 consideration of aggravating, as well as mitigating,
25 circumstances and the law that I would instruct you that

1 applied to that case, return a sentence of life in prison?

2 A Yes, I could.

3 Q If you were a juror in that situation could you,
4 depending upon the particular facts and circumstances of
5 that case, once again, including the consideration of
6 aggravating, as well as mitigating, circumstances and the
7 law that I would instruct you that applied to that case,
8 return a sentence of death?

9 A With very careful consideration.

10 Q Do you understand that there are two sentencing options
11 that are always available to the jury in the sentencing
12 phase of a death penalty trial, that being life imprisonment
13 or death? And do you understand that each and every juror
14 must be able to impose either of those sentences?

15 A Yes.

16 Q Now, if you were chosen for service on this jury,
17 Ms. Weaver, you would be housed or sequestered in a motel
18 for the duration of the trial.

19 Now, I have no way of knowing exactly how long this
20 case is going to last. I have got an idea, but, you know,
21 trying to figure out how long something is going to last
22 like this is really difficult. I would say no more than
23 seven to ten days. It could be much shorter than that.

24 Except for the personal inconvenience that you would
25 suffer, would this pose a serious danger to the health or

1 well-being of yourself or of those dependent upon you?

2 A No, sir.

3 Q Thank you for responding to my questions. Please
4 answer any of Mr. Morin's questions.

5 EXAMINATION BY MR. MORIN

6 Q Good morning, Ms. Weaver. My name is Michael Morin.
7 I, along with Keith Kelly and Jennifer Johnson, represent
8 Mr. Moore in this case.

9 I want to go over a couple of things with you and make
10 sure you know what he told you.

11 A Right.

12 Q Okay. You understand, first of all, that Mr. Moore is
13 presumed innocent.

14 A Oh, yes.

15 Q Okay. And in the event that you were on this jury and
16 the jury found him guilty, there would be the second phase
17 of the trial.

18 A Right.

19 Q And at that time the state would present what the judge
20 has already told you is aggravating circumstances. And you
21 as a juror would have to be convinced beyond a reasonable
22 doubt that they had proven at least one of those before you
23 would get to making a decision about whether life or death
24 was appropriate.

25 A Right.

Jury qualification -- Number 286

1 Q Okay. Now, and you have said that you think that you
2 would be able to do that if you felt that was appropriate.

3 A Yes.

4 Q Okay. Now, two other parts of that procedure that one
5 would come up, the other one may, but if you were on the
6 jury and that was your decision, there would be a form with
7 12 lines where each juror would have to sign saying that
8 death was their decision. And if you decided that it was
9 your feeling that that was appropriate, would you be able to
10 sign saying, yes, this is my decision?

11 A Yes, I could.

12 Q Okay. And you may also have to come back out here and
13 announce in open court that that was your decision. Would
14 you have any problem doing that?

15 A I could do that.

16 Q Okay. The only other thing that I would like to ask
17 you about is on your questionnaire you had stated that your
18 house had been broken into and that somebody has been
19 arrested. But do you know? Could you tell me about that
20 incident?

21 A That was in 1976. We were building the house, and my
22 husband was working on it. We weren't living there at the
23 time. And some boys in the neighborhood broke in and stole
24 tools and things.

25 Q Were they caught?

1 A They were caught. I don't think there was a penalty.

2 Q Thank you very much.

3 MR. GOWDY: Your Honor, may it please the Court, would
4 you allow Mr. Morin and I to ask you one very quick
5 question?

6 THE COURT: Yes, sir.

7 (Bench conference held off the record.)

8 EXAMINATION BY MR. GOWDY

9 Q Good morning, ma'am. My name is Trey Gowdy. I'm the
10 solicitor here in Spartanburg. Barry Barnette is the
11 gentlemen sitting in the middle and Donnie Willingham is the
12 gentlemen sitting on the end. They are both my deputy
13 solicitors.

14 In response to His Honor's questioning about being able
15 to impose the death penalty, I think I wrote down your
16 phrase, which is a very appropriate phrase, but after very
17 careful consideration.

18 A Yes.

19 Q Could you tell me what the basis for your background in
20 terms of your views or thoughts or beliefs on capital
21 punishment would be?

22 A Well, I would have to go by the law --

23 Q Yes, ma'am.

24 A -- as the judge said. I would feel like my purpose is
25 particularly to go by the law.

1 Q Yes, ma'am.

2 A I just believe in doing things the way they should be,
3 and that would be my, you know, my basis for that.

4 Q Okay. If a particular case, in a hypothetical case,
5 and, again, I know these jury questionnaires make us answer
6 questions that we wouldn't ordinarily answer in life and I
7 may be asking you questions I wouldn't ordinarily ask you in
8 life.

9 A Right.

10 Q But if you were the involved in the case --

11 THE COURT: No, sir. Let's not get case specific. You
12 can't do that. If you want to ask her something in general,
13 you can do so, but not case specific.

14 MR. GOWDY: Yes, sir.

15 Q I noticed that you had a bumper sticker, vote no for
16 the lottery.

17 A Right.

18 Q Are your views on gambling in general such that you
19 would, so strong that you would -- or would you be able to
20 be fair if issues relevant to gambling were involved in the
21 case?

22 A Yes, I could.

23 Q Thank you very much.

24 MR. GOWDY: Thank you, Your Honor.

25 THE COURT: Anything else, Mr. Morin?

1 MR. MORIN: No, sir.

2 THE COURT: Ms. Weaver, I want to thank you very much
3 for being here on Monday, as well as this day.

4 And I find that you are qualified to serve as a
5 potential juror in this case. With that qualification, I'm
6 going to give you some more instructions.

7 Number one, you are to continue my previous
8 instructions that you are not to discuss this case with
9 anyone, whether it be fellow jurors, family, friends or
10 anyone else you come into contact with. If anyone attempts
11 to contact you concerning this case, I want you to gather as
12 much information about that person as you possibly can, and
13 report to that to me immediately, because that's a very
14 serious matter, and I would deal with that situation
15 accordingly.

16 Also, I strongly instruct you that you're not to read,
17 watch or listen to any news accounts concerning this case.
18 Very simply put, Ms. Weaver, if you're selected as a juror
19 in this case, all I would want you to consider is what you
20 see and hear in this courtroom, nothing more and nothing
21 less.

22 Now, with that instruction, you're going to have to, as
23 we say, get busy. I have the entire group of qualified
24 jurors that will be coming back here this afternoon at 3:30.
25 We're going to impanel a jury at that time.

Jury qualification -- Number 286

1 So, you need to go home and pack your bags, and be
2 prepared when you come back at 3:30, if you're selected to
3 serve as a juror, to stay with us throughout the course of
4 the trial.

5 Now, when you come back this afternoon, leave your
6 belongings in your vehicle. If you are selected, then the
7 jury custodians that would be responsible for the jury's
8 care and keeping will take you and your colleagues to the
9 location where you would be staying throughout the course of
10 the trial. And you would remain with us until the trial is
11 over.

12 If you are not selected, we would thank you very much
13 for your having been here and send you on your way and you
14 would go back to your daily activities.

15 So, what you need to do is go home and start packing
16 and get ready, and be back here at 3:30. And leave your
17 belongings in your car. I look forward to seeing you back
18 here this afternoon. Thank you, ma'am.

19 (Whereupon, the juror was excused from the courtroom.)

20 THE COURT: Let the record reflect that Juror Number
21 286, Rebecca Weaver, is qualified to serve as a potential
22 juror in this case pursuant to Section 16-320 of our code.

23 | 232, Rebecca A. Rocho.

24 JUROR NUMBER 232, REBECCA A. ROCHO,
25 having been first duly sworn, was voir dired as follows:

1 EXAMINATION BY THE COURT

2 Q Good morning. You are Rebecca A. -- is that Rocho?

3 A Yes, sir.

4 Q That's the correct punctuation?

5 A Yes, sir, it is.

6 Q Ms. Rocho, you understand that you have been placed
7 under oath here today.

8 A Yes, sir.

9 Q And you also recall when I dismissed you and your other
10 jurors on Monday that I gave you some instructions that you
11 were not to discuss this case with anyone, that if anyone
12 attempted to contact you concerning this matter that you
13 were to report that to me today, and that you were to
14 refrain from reading, watching or listening to any news
15 accounts concerning this case. Have there been any
16 violations of my instructions?

17 A No, sir.

18 Q Now, Ms. Rocho, over the next few minutes I'm going to
19 ask you some questions. Thereafter one of the defense
20 lawyers and then one of the solicitors will ask you a
21 question, some questions.

22 Please keep in mind that we are not in any way
23 attempting to invade your privacy, but due to the nature of
24 the proceedings that we are about here it's extremely
25 important that certain questions are asked and answered.

1 Keep in mind that there are no right or wrong answers
2 to these questions. Just answer them openly and honestly
3 and fully. And also keep in mind that we are not
4 challenging a view that you might have. We simply need to
5 know what your views are in particular areas.

6 Also, if you have -- at any time a situation arises
7 where you do not understand the question, you need to have
8 it repeated or clarified, simply let me or the lawyer asking
9 the question know that, and we will accommodate you.

10 Also, I want you to pay very close attention to the
11 questions that are presented to you, because we are probably
12 going to be talking about and questioning you about and
13 discussing things that you maybe have never even considered
14 prior to coming to court here this week.

15 I would tell you that the lawyers and I have copies of
16 your juror questionnaire, because that was important to us
17 in preparing for today.

18 Now, among the things, Ms. Rocho, that we are going to
19 be talking about, will include references to the word
20 penalty, and the mere fact that I even mention that word
21 does not in any way indicate anything about the defendant,
22 Mr. Moore. He is presumed in the law to be innocent. Do
23 you understand that?

24 A Yes, sir.

25 Q Now, let's assume for a few moments that you were a

1 juror in a criminal case.

2 Could you listen to the law, accept and apply that law
3 as I would instruct you as the judge of this Court even
4 though you may disagree with the law that I instructed you
5 or think that it should be some other way?

6 A Could you say that again?

7 Q I'll be happy to.

8 Let's assume that you were a juror in a criminal case.
9 Could you listen to the law, accept and apply that law as I
10 would instruct you as the judge of this Court even though
11 you may disagree with the law that I had instructed or think
12 that it should be some other way?

13 A Yes, sir.

14 Q Could you decide this case based solely on the evidence
15 presented here in this courtroom and disregard anything that
16 you might have read, seen or heard about the case?

17 A Yes, sir.

18 Q Now, in a criminal case, Ms. Rocho, the state has the
19 burden of proving guilt. And the burden of proof that the
20 state must meet is proof beyond a reasonable doubt.

21 A defendant has absolutely no responsibility, no burden
22 to his prove his innocence. Do you understand that legal
23 principle?

24 A Yes, sir.

25 Q Now, could you, depending on the facts and evidence and

1 the law that I would instruct you in a particular case, find
2 a defendant either guilty or not guilty?

3 A Yes, sir.

4 Q Now, as you know from being here on Monday with the
5 entire jury panel, this is a case in which the State of
6 South Carolina is seeking the death penalty. And, as such,
7 we are going to be engaged in what we call a bifurcated
8 proceeding. That's kind of a high-dollar word which simply
9 means that it's divided into two parts, the guilt phase and
10 the sentencing phase.

11 Now, if you were a juror in such a situation and if the
12 jury found the defendant not guilty of murder in the guilt
13 phase, do you understand that the trial would end at that
14 point?

15 A Yes, sir.

16 Q However, if you were a juror in such a situation and if
17 the jury had found the defendant guilty of murder in that
18 first or guilt phase, do you understand that you would then
19 move to the second or sentencing phase of that trial?

20 A Yes, sir.

21 Q Now, Ms. Rocho, during the sentencing phase evidence
22 would be presented to the jury in the form of aggravating
23 circumstances, as well as mitigating circumstances.

24 Now, aggravating circumstances are facts, incidents,
25 details or occurrences which the General Assembly of the

1 State of South Carolina has declared by law would make
2 worse, that is to aggravate, the crime of murder.

3 In other words, when there is the presence of an
4 aggravating circumstance that goes along or accompanies the
5 crime of murder it, increases the enormity or adds to the
6 injury of that crime of murder. It's a murder that's
7 committed in the commission of or in connection with another
8 crime or murder. Do you understand that?

9 A Yes, sir.

10 Q Now, mitigating circumstances are also incidents,
11 details or occurrences which our general assembly has, once
12 again, declared by law would reduce the severity of the
13 crime of murder and may be considered by the jury as
14 extenuating or as reducing the degree of responsibility for
15 the crime of murder. Do you understand that?

16 A Yes, sir.

17 Q Now, let's assume for a few more moments that you were
18 a juror in that situation. I'm talking about the second or
19 sentencing phase of a death penalty case.

20 Could you, depending upon the particular facts and
21 circumstances of that case, of course, including the
22 consideration of aggravating and mitigating circumstances
23 and the law that I would instruct you that applied to that
24 case, return a sentence of life in prison?

25 A Yes, sir, I think so. I am not sure.

1 Q Do you want me to repeat that?

2 A Yes. I got it mixed up. I'm sorry.

3 Q If you were a juror in that situation, the sentencing
4 phase, could you, depending upon the particular facts and
5 circumstances of that case, including the consideration of
6 aggravating, as well as mitigating, circumstances and the
7 law that I would instruct you that applied to that case,
8 return a sentence of life in prison?

9 A I guess so. Yes, sir. I don't know what to say. I'm
10 sorry.

11 Q Okay. If you were a juror in that situation could you,
12 depending upon the particular facts and circumstances of
13 that case, once again, including the consideration of
14 aggravating and mitigating circumstances and the law that I
15 would instruct you that applied to that case, return a
16 sentence of death?

17 A Yes, sir.

18 Q Do you understand that there are two sentencing options
19 that are always available to the jury in a death penalty
20 sentencing phase of a case, that being life imprisonment or
21 death?

22 A Yes, sir.

23 Q And you also understand that each and every juror that
24 sits on that jury panel must be able to impose either of
25 those sentences. Do you understand that?

1 A Yes, sir.

2 Q Now, Ms. Rocho, you understand that if you are chosen
3 for service on this jury you would be sequestered, which
4 means you would be housed in a motel for the duration of the
5 trial under the supervision of jury custodians.

6 Except -- I don't know exactly how long this case would
7 last. I would say at the very outside seven to ten days.
8 It could be less than that.

9 Except for the personal inconvenience that you would
10 suffer, would this pose a serious danger to the health or
11 well-being of yourself or of those dependent upon you?

12 A No, sir.

13 Q Thank you for answering my questions. Please answer
14 any of Mr. Kelly's questions.

15 MR. KELLY: May it please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 EXAMINATION BY MR. KELLY

18 Q Ms. Rocho, I am Keith Kelly, and along with Michael
19 Morin and Jennifer Johnson, we represent Mr. Moore seated to
20 my immediate right.

21 Looking at your questionnaire, I see you have three
22 school-age children.

23 A Yes, sir.

24 Q Is that right?

25 A Yes, sir.

Jury qualification -- Number 232

1 Q And one of them, your daughter, is about 12 years of
2 age.

3 A Yes, sir.

4 Q Serving on this jury, as the Court has told you, would
5 require that you be sequestered or housed in a motel
6 throughout these proceedings.

7 Would those children be able to get to school and back
8 if you are in such a situation?

9 A Yes, sir. They ride the bus.

10 Q Okay. All right. And you left blank your husband's
11 occupation. But does he work?

12 A Well, he's kind of laid off. He's in between jobs.
13 He's doing odd jobs.

14 Q Yes, ma'am. Okay. So, again, my point is that he,
15 somebody, your husband --

16 A Yes.

17 Q -- would be at home at night --

18 A Yes, sir.

19 Q -- to take care of --

20 A Yeah. He would be at home at night, yes.

21 Q All right. You indicated in response to religion that
22 you are Catholic. Do you attend a particular Catholic
23 church in the Spartanburg area?

24 A Our Risen Savior.

25 Q Okay. Do you do that regularly?

Jury qualification -- Number 232

- 1 A Usually unless something comes up and I can't make it.
- 2 Q Oh, okay. That's all right.
- 3 There was a -- I'm missing a little information here
- 4 about the victim of a crime. Have you ever been the victim
- 5 or your family been the victim of a crime like your house
- 6 broken into or anything?
- 7 A Oh, yes, sir.
- 8 Q A long time ago or recently?
- 9 A It's been a couple of years.
- 10 Q Was that here in Spartanburg County?
- 11 A Oh, yes, sir.
- 12 Q And could you tell me what happened to that? Was
- 13 somebody caught or punished for that?
- 14 A No. I just -- we think it was one of our kid's friends
- 15 Somebody came out and, you know, took notes and stuff, but
- 16 they never caught anybody.
- 17 Q Okay.
- 18 A And there was a bunch of other stuff going around in
- 19 the neighborhood at that time too that was being stolen, so.
- 20 Q Oh, okay. So, you and everybody else then thought it
- 21 was kids.
- 22 A Yeah. But nobody got caught that we know of. They
- 23 never said they caught them.
- 24 Q Nobody was hurt at your house, was there?
- 25 A Oh, no. No one was home at the time.

1 Q All right. And you indicated that you have no bumper
2 stickers. But in recent times many people have begun to fly
3 the American flag either on their car, little flag, or
4 magnet attached to the car. Do you have one of those?

5 A We had one, but it came off. So, I don't have
6 anything. I'm sorry.

7 Q You had one. All right. At your home do you fly any
8 flag, the American flag, the state flag?

9 A At the moment, no, because my husband doesn't have his
10 flag pole in, so, we don't fly that now, but we used to when
11 we had the flag pole where we used to live.

12 Q Okay. Do you own -- if you don't fly it, do you own
13 any flag?

14 A Oh, yes, sir, the American flag.

15 Q Any beside the American flag?

16 A Racing flags.

17 Q Oh, okay. What kind of racing flag, NASCAR?

18 A Yes, sir.

19 Q What number?

20 A Five, Terry Labonte.

21 Q I understand. Any other racing flags besides Labonte?

22 A I think he had a Dale Earnhart. I don't know.

23 Q The three or the eight?

24 A What?

25 Q The three or the eight?

1 A The three.

2 Q The three. As far as organizations, do you belong to
3 any particular organization, whether it's a booster club or
4 a P. T. A. or anything like that?

5 A No, sir.

6 Q Church club of any kind whatsoever?

7 A No, no.

8 Q Magazines. I noticed you listed some, the Boiling
9 Springs paper and Women's Day. Does your husband receive
10 any magazines?

11 A No. He just reads the paper, and, you know, sometimes
12 I think he reads sports magazines. Somebody has been
13 sending them to us, so, he looks at those or the car type
14 magazines, Auto and stuff like that.

15 Q Okay. And Field and Stream magazine by chance, hunting
16 magazines, gun and ammo or anything like that?

17 A No.

18 Q As far as law enforcement personnel, do you have -- are
19 you related by blood or marriage to a law enforcement
20 officer here in Spartanburg County?

21 A No, sir.

22 Q In response to Judge Clary's questions about giving a
23 life sentence or giving a death sentence, you understand
24 that you could give -- the choice would be yours. You could
25 give life or death. The state law, as Judge Clary will give

1 you, does not require you to do either one. Do you
2 understand that?

3 A Yes, sir.

4 Q And do you understand that Mr. Gowdy and his assistants
5 would attempt to prove, as Judge Clary has told you, some
6 aggravating circumstance? And Judge Clary would then tell
7 you what those are at the appropriate time.

8 And even if you were to find that at least one of those
9 aggravating circumstances exists, you still are not required
10 to return a sentence of death.

11 A Yes, sir.

12 Q Do you understand that?

13 A Yes, sir.

14 Q And, at the same time, we would be offering what Judge
15 Clary told you is a mitigating factor, something that
16 lessens the responsibility. Do you understand?

17 A Yes, sir.

18 Q If you and the other 11 jurors determined based on the
19 evidence that you have seen that has been allowed by the
20 Court that death would be an appropriate punishment, there
21 would be a sheet of paper that would have some writing on it
22 and 12 lines for each and every one to sign. Could you sign
23 your name to that sheet of paper as evidence of your vote
24 for death?

25 A Yes, sir.

Jury qualification -- Number 232

1 Q Could you be the last person to sign it?

2 A It depends on the circumstances is all I can say. I
3 don't know if that's a good answer or not. I guess, yes.

4 Q Thank you, ma'am.

5 A You are welcome.

6 THE COURT: Mr. Barnette.

7 MR. BARNETTE: Thank you, Your Honor. May it please
8 the Court.

9 EXAMINATION BY MR. BARNETTE

10 Q Good morning, Ms. Rocho.

11 A Good morning.

12 Q My name is Barry Barnette. I am one of the deputy
13 solicitors. Seated along with me is Trey Gowdy, the
14 solicitor in the circuit, as well as Donnie Willingham, his
15 other deputy solicitor.

16 I noticed one thing. I noticed that you watch a lot of
17 the favorite shows like Law and Order, Judge Amy and CSI.

18 A Mostly it's family law.

19 Q Family law instead of criminal law. That's okay. But
20 you like those type of shows.

21 A Yes, sir.

22 Q That's the shows you are interested in.

23 Let's follow up Mr. Kelly's questions. If you
24 decided -- you was on the jury and you've heard the penalty
25 phase. If you decided that death was the appropriate

1 verdict in this case, could you come into open court and
2 announce your verdict to the judge and all of the parties
3 here?

4 A Yes, sir.

5 Q And I noticed that you're a Catholic. Is there any
6 position your preacher takes or pastor takes in that case at
7 your church, or is there anything that -- is there anything
8 from the church that would affect your decision in a death
9 penalty case?

10 A Oh, no, sir.

11 Q And you would follow what the judge gives you, follow
12 the law.

13 A Yes, sir.

14 Q Thank you, ma'am, for your time.

15 A You're welcome.

16 THE COURT: Anything else from the defense, Mr. Kelly?

17 MR. KELLY: No, Your Honor.

18 THE COURT: Ms. Rocho, I want to thank you very much
19 for your participation here on Monday, as well as today.

20 I find you are qualified to serve as a potential juror
21 in this case. And with that qualification, I am going to
22 give you some more instruction that you have already
23 received.

24 First of all, continue my instructions that you are not
25 to discuss this case with anyone that you might come into

1 contact with, whether that be fellow jurors, family, friends
2 or anyone else.

3 Also, if anyone should attempt to contact you
4 concerning this case, I want you to gather as much
5 information about that person or persons as you can, and
6 report that to me immediately, because that's a very serious
7 matter. And I would deal with the person that attempted to
8 contact you accordingly.

9 Once again, I'm going to continue my very strong
10 instruction that you are not to read, watch or listen to any
11 news accounts concerning this case. Very simply put, all I
12 would want you to consider if you were chosen as a juror in
13 this case is what you see and hear in this courtroom,
14 nothing more and nothing less.

15 Now, with that instruction, Ms. Rocho, I'm going to
16 tell you that I'm bringing the -- all of the qualified
17 potential jurors back here this afternoon at 3:30. You need
18 to report back here to the jury assembly room at 3:30 this
19 afternoon. Leave your belongings in your car. You need to
20 pack and be ready to stay with us for the duration of the
21 trial when you come back here this afternoon.

22 If you are selected, the jury custodians would take you
23 and your colleagues to the location where you would be
24 housed for the duration of the trial, and you would remain
25 with us until the trial is completed.

1 If you are not selected, we're going to thank you for
2 your participation here today and earlier this week and send
3 you about your regular daily activities.

4 So, what you need to do is go home and start packing
5 and be back here in the jury assembly room this afternoon at
6 3:30. I will look forward to seeing you then.

7 (Whereupon, the juror was excused from the courtroom.)

8 THE COURT: Let the record reflect that Juror Number
9 232, Rebecca Rocho, is qualified to serve as a potential
10 juror in this case pursuant to Section 16-320 of our code.

11 269, Patricia Thomas.

12 JUROR NUMBER 269, PATRICIA M.

13 THOMAS, having been first duly sworn, was voir dired as
14 follows:

15 EXAMINATION BY THE COURT

16 Q You are Patricia M. Thomas.

17 A Yes, sir.

18 Q Ms. Thomas, you understand that you are under oath here
19 today.

20 A Yes, sir.

21 Q And you also understand that on Monday when I brought
22 the entire jury panel in that you were placed under oath.

23 A Yes, sir.

24 Q And you recall that I asked you if all of the
25 information contained in your juror information sheet was

1 correct.

2 A Yes, sir.

3 Q And you have stated at that time, I think, that it was
4 correct.

5 A Yes, sir.

6 Q Are there any changes or additions that you need to
7 make to it at this time?

8 A No, sir.

9 Q And you also recall that I instructed you that you were
10 not to talk to anyone about this case while you were away
11 from the courthouse, that if anyone attempted to contact you
12 that you were to report to me, and also that you were to
13 refrain from reading, watching or listening to any news
14 accounts concerning this case. Have there been any
15 violations of my instructions?

16 A No, sir.

17 Q Now, Ms. Thomas, during the next few minutes I'm going
18 to be asking you some questions, and one of the defendant's
19 lawyers, as well as one of the solicitors, will ask you some
20 questions.

21 Please keep in mind that we are not in any way
22 attempting to invade your privacy, but because of the
23 proceedings that we are about here this week it's extremely
24 important that certain questions are asked and answered.
25 Keep in mind that there are no right or wrong answers to

1 these questions. But please answer them openly and honestly
2 and fully.

3 And keep in mind that no one is challenging the view
4 that you might have. We simply need to know what your view
5 is in a particular area or areas.

6 Also, if at any time you do not understand one of my
7 questions or one of the lawyers' questions, simply let us
8 know. We will attempt to repeat it or clarify it so that
9 you can understand it.

10 Also, listen very carefully to these questions, because
11 during the next few minutes we are probably going to be
12 asking you some questions about things that you maybe have
13 never considered prior to coming to court here this week.

14 Also, I would tell you that the lawyers and I have
15 copies of your juror information sheet, because that was
16 important to us in preparing for this morning's session.

17 Now, Ms. Thomas, among the things that we're going to
18 be talking about over the next few minutes, will include
19 references to the word penalty. And the mere fact that I
20 even mention that word or that we discuss that word does in
21 any way indicate anything about the defendant, Mr. Moore.
22 He is presumed in the law to be innocent. Do you understand
23 that?

24 A Yes, sir.

25 Q Now, let's assume that you were a juror in a criminal

1 case. Could you listen to the law, accept and apply that
2 law as I would instruct you as the judge of this Court even
3 though you may disagree with the law that I instructed or
4 think that it ought to be some other way?

5 A Yes, sir.

6 Q Could you decide this case based solely on the evidence
7 presented here in this courtroom and disregard anything that
8 you may have heard, read or seen about this case?

9 A Yes, sir.

10 Q Now, in a criminal case, Ms. Thomas, the state as the
11 burden of proving guilt. The burden of proof that the state
12 must meet is proof beyond a reasonable doubt.

13 And a defendant has absolutely no responsibility, no
14 burden to prove his innocence. Do you understand that legal
15 principle?

16 A Yes, sir.

17 Q Could you, depending on the facts and the evidence and
18 the law as I would instruct you in a particular case, find a
19 defendant either guilty or not guilty?

20 A Yes, sir.

21 Q Now, as you know from being here on Monday, I told the
22 entire jury at that time that this is a case in which the
23 State of South Carolina is seeking the death penalty. And,
24 as such, we are going to be engaged in what we call a
25 bifurcated trial. That simply means that it's a trial

1 divided into two parts.

2 If you were a juror in such a situation and if the jury
3 had found the defendant not guilty of murder in the first
4 part of that trial, the guilt phase, do you understand that
5 the trial would end at that point?

6 A Yes, sir.

7 Q However, if you were a juror in such a situation and
8 the jury found the defendant guilty of murder during the
9 guilt phase, do you understand that you would then move the
10 second or sentencing phase of that trial?

11 A Yes, sir.

12 Q During that phase of the trial, Ms. Thomas, evidence
13 would be presented to the jury in the form of aggravating
14 circumstances, as well as mitigating circumstances.

15 Now, aggravating circumstances are facts, incidents,
16 details or occurrences which the general assembly of our
17 state, our State Legislature in Columbia, has declared by
18 law would aggravate, that is to make worse, the crime of
19 murder.

20 In other words, when an aggravating circumstance is
21 present or accompanies the crime of murder, it increases the
22 enormity or adds to the injury of that crime of murder.
23 It's a murder that's committed in the commission of or in
24 connection with another crime or incident. Do you
25 understand that?

Jury qualification -- Number 269

1 A Yes, sir.

2 Q Mitigating circumstances are also incidents, details or
3 occurrences which our General Assembly in Columbia has
4 declared by law reduces the severity of the crime of murder
5 and may be considered by the jury as extenuating or as
6 reducing the degree of responsibility for the crime of
7 murder.

8 Do you understand what I mean when I speak of a
9 mitigating circumstances?

10 A Yes, sir.

11 Q Now, Ms. Thomas, if you were a juror in that situation,
12 the second phase, sentencing phase, of a death penalty case,
13 could you, depending upon the particular facts and
14 circumstances of that case, including the consideration of
15 aggravating, as well as mitigating, circumstances and the
16 law that I would instruct you that applied to that case,
17 return a sentence of life in prison?

18 A Yes, sir.

19 Q If you were a juror in that situation could you,
20 depending upon the particular facts and circumstances of
21 that case, once again, including the consideration of any
22 aggravating, as well as mitigating, circumstances and the
23 law that I would instruct you that applied to that case,
24 return a sentence of death?

25 A I don't think so.

1 Q You could not return a death sentence.

2 When you were in the other room you were given a sheet
3 of paper that had three types of jurors on it, I believe.
4 There was one juror that was classified, that we would say
5 that would lean toward giving life in each instance, another
6 one that would always lean toward giving death, and then a
7 third juror that could consider either life or could impose
8 either life or death depending on the circumstances.

9 Are you telling me that you fall into that first
10 category, that you would always give life?

11 A I don't believe I could just do the death.

12 Q All right. Mr. Kelly.

13 MR. KELLY: Thank you, Judge. May it please the Court,
14 Your Honor.

15 EXAMINATION BY MR. KELLY

16 Q Ms. Thomas, my name is Keith Kelly, and along with
17 Michael Morin and Jennifer Johnson, we represent Mr. Moore
18 seated at the table.

19 I appreciate your honest views that you've shared with
20 us here today.

21 The state seeks the death penalty in this case, as you
22 come to learn since Monday of this week. The state
23 legislature, our general assembly, has said that in some
24 instances, in some cases, that the death penalty is an
25 appropriate punishment; not all but in some.

1 And as Judge Clary has told you, at the appropriate
2 time the state would then attempt to prove to your
3 satisfaction beyond a reasonable doubt that at least one of
4 those factors that the state has said must exist, that at
5 least one of those does exist, whether it be blue, green,
6 yellow, whatever. And at that point in time you and your
7 fellow jurors would then be able to consider the death
8 penalty. Do you understand that?

9 A Yes, sir.

10 Q Okay. Now, if the state proved one or more of those
11 factors, any one of them, doesn't matter, but if they did
12 prove one or more of those and you and your jurors were then
13 considering the death penalty or life, because you can do
14 either. Do you understand? Nobody, the state, the judge,
15 nobody is going to tell you which way you have to vote. Do
16 you understand?

17 A Yes, sir.

18 Q But could you when you are having that discussion,
19 could you consider the death penalty?

20 THE COURT: No, sir. Could she impose the death
21 penalty.

22 MR. KELLY: Yes, sir.

23 THE COURT: Not just consider it.

24 MR. KELLY: May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 (Bench conference held off the record.)

2 THE COURT: You can continue.

3 Q Ms. Thomas, could you consider and impose the death
4 penalty at that point in time?

5 A No, sir.

6 Q Thank you, ma'am.

7 THE COURT: Solicitor.

8 MR. BARNETTE: Nothing further, Your Honor. Thank you.

9 THE COURT: Anything further from the defense?

10 MR. KELLY: No, Your Honor.

11 THE COURT: Ms. Thomas, I want to thank you very much
12 for your participation here on Monday, as well as this
13 morning. This is going to conclude your responsibilities
14 during this term of court.

15 On behalf of the State of South Carolina, and most
16 particularly Spartanburg County, I thank you very much for
17 your being here and the candor in your answers and
18 participating with us.

19 Once again, your duties will no longer be required.
20 You are free to go about your regular activities.

21 Thank you, ma'am. You are excused.

22 (Whereupon, the juror was excused from the courtroom.)

23 THE COURT: Let the record reflect that Juror Number
24 269, Patricia M. Thomas, is not qualified to serve as a
25 potential juror in this case pursuant to Section 16-320 as

1 she would be unable to impose the death penalty.

2 Number 36, Wanda K. Brothers.

3 MR. KELLY: Your Honor, just a minute.

4 THE COURT: Just a minute.

5 MR. KELLY: I understand, as we were talking earlier,
6 that she must not only be able to consider it. She must be
7 able to impose it. And I wasn't trying to evade the case
8 law of the state or the Court's instructions, but what I was
9 trying to do was or is, is ask a two-part question, Sub A
10 type thing, that if you could consider it, and if you could
11 indeed consider it, could you then impose it. Is that not a
12 proper line of questioning?

13 THE COURT: Well, sir, the thing about it, I've never
14 heard you ask the second part of that question, Mr. Kelly,
15 in, let's see, Tuesday and Wednesday, and two days plus.

16 That's the first time that I have ever heard you say
17 that you were going to ask a two-part question.

18 Now, if you are going to ask a two-part question, yes;
19 but if you are going to mislead the juror, absolutely not.

20 MR. KELLY: Yes, sir.

21 THE COURT: Because you say you know the case law. And
22 if you're telling me that, then you do. But if you mislead
23 the juror, then I'm going to deal with you.

24 MR. KELLY: Yes, sir.

25 THE COURT: So, if you can ask that question properly,

1 do it. But I think that our case law is very clear. I
2 think that lady sitting beside you, if she has been on 60 of
3 these cases, she can tell you that too, whether she has been
4 in Georgia, South Carolina, anywhere else. But I am
5 concerned about South Carolina right now. And you are going
6 to do it under our case law.

7 But if you don't add that second part, I'm going to be
8 with you.

9 MR. KELLY: Yes, Your Honor.

10 THE COURT: And I will impose sanctions, because I have
11 already told you.

12 MR. KELLY: Yes, Your Honor.

13 THE COURT: Next juror.

14 JUROR NUMBER 36, WANDA K. BROTHERS,
15 having been first duly sworn, was voir dired as follows:

16 EXAMINATION BY THE COURT

17 Q Good morning. You are Wanda K. Brothers.

18 A Yes, sir.

19 Q And, Ms. Brothers, you understand that you are under
20 oath here today.

21 A Yes, sir.

22 Q And you also recall that when I dismissed you on Monday
23 that I gave you certain instructions that you were not to
24 discuss this case with anyone, that if anyone attempted to
25 contact you concerning this matter that you were to report

1 that to me today, and that also you were to refrain from
2 reading, watching or listening to any news accounts
3 concerning this case. Have there been any violations of my
4 instructions?

5 A No, sir.

6 Q Now, Ms. Brothers, I'm going to be posing some
7 questions to you. Thereafter, one of the defense lawyers
8 and one of the solicitors will also present some questions.

9 Please understand that we're not in any way attempting
10 to invade your privacy, but due to the nature of the
11 proceeding that we are about this week it's extremely
12 important that certain questions are asked and answered.

13 I want you to understand that there are no right or
14 wrong answers to these questions. So, please, just answer
15 them openly and honestly and fully.

16 And also keep in mind that no one is challenging your
17 view. We just need to know what your view is in particular
18 areas.

19 Also, if I state a question or if one of the lawyers
20 states a question that you do not understand, if you want it
21 repeated, clarified, whatever, you simply let us know, and
22 we will accommodate you.

23 Also, listen very carefully to all of these questions,
24 because we're probably going to be asking you about things
25 over the next few minutes that you have never considered

1 prior to coming to court this week.

2 The lawyers and I have copies of your information sheet
3 that was provided to the Court, because that was important
4 to us in preparing for this day.

5 Now, among the things that we're going to be talking
6 about over the next few minutes, will include references to
7 the word penalty, but the mere fact that I mention that word
8 or we discuss that word does not in any way indicate
9 anything about the defendant, Mr. Moore. He is presumed in
10 the law to be innocent. Do you understand that?

11 A Yes, sir.

12 Q Let's assume that you were a juror in a criminal case,
13 Ms. Brothers.

14 Could you listen to the law, accept and apply that law
15 as I would instruct you as the judge of this Court even
16 though you may disagree with that law that I instructed or
17 think that it ought to be some other way?

18 A Yes, sir, I think so.

19 Q Could you decide this case based solely on the evidence
20 presented here in this courtroom and disregard anything that
21 you may have heard, read or seen about this case?

22 A Yes, sir, I think so.

23 Q In a criminal case, Ms. Brothers, the state has the
24 burden of proving guilt. And the burden of proof for the
25 State of South Carolina is proof beyond a reasonable doubt.

1 A defendant has absolutely no burden, absolutely no
2 responsibility to prove his innocence. Do you understand
3 that legal principle?

4 A Yes, sir.

5 Q Could you, depending on the facts and evidence and the
6 law as I would instruct you in a particular case, find a
7 defendant either guilty or not guilty?

8 A Yes.

9 Q Now, as you know from being here on Monday when the
10 entire jury panel was before me, this is a case in which the
11 State of South Carolina is seeking the death penalty. And,
12 as such, we are going to be engaged in what we call a
13 bifurcated trial or proceeding. That very simply means that
14 it's divided into two parts, if necessary.

15 If you were a juror in a death penalty case and if the
16 jury had found the defendant not guilty of murder, do you
17 understand that the trial would end at that point in time
18 and it would not be necessary to go on to the second phase?

19 A Yes.

20 Q However, if you were a juror in such a situation and if
21 the jury had found the defendant guilty of murder, do you
22 understand that you would then move to that second or
23 sentencing phase of the trial?

24 A Yes, sir.

25 Q Now, in that phase of the trial, Ms. Brothers, evidence

1 would be presented to the jury in the form of aggravating
2 circumstances, as well as mitigating circumstances.

3 Now, aggravating circumstances are facts, incidents,
4 details or occurrences which the general assembly of our
5 state, that's our state legislature that meets in Columbia,
6 has declared by law would make worse, that is to aggravate,
7 the offense of murder.

8 In other words, the presence of an aggravating
9 circumstance when it goes along with or accompanies a murder
10 increases the enormity or adds to the injury of that crime
11 of murder. It's a murder that's committed in the commission
12 of or in connection with another crime or incident. Do you
13 understand that?

14 A Yes, sir.

15 Q Now, mitigating circumstances are also incidents,
16 details or occurrences which our general assembly has, once
17 again, declared by law reduces the severity of the crime of
18 murder and may be considered by the jury as extenuating or
19 as reducing the degree of responsibility for the crime of
20 murder. Do you understand that?

21 A Yes, sir.

22 Q Let's assume that you were a juror in such a situation,
23 the second phase, the sentencing phase, of a death penalty
24 case.

25 Could you, depending upon the particular facts and

1 circumstances of that case and the law that I would instruct
2 you that applied to that case, considering the aggravating
3 and mitigating circumstances that would be presented, return
4 a sentence of life in prison?

5 A Yes, sir.

6 Q If you were a juror in that situation could you,
7 depending on the particular facts and circumstances of that
8 case, once again, including the consideration of all
9 aggravating and mitigating circumstances and the law that I
10 would instruct you that applied to that case, return a
11 sentence of death?

12 A Yes, I think so.

13 Q Now, you understand, Ms. Brothers, that there are two
14 sentencing options that are always available to the jury in
15 the sentencing phase of such a trial, that being life
16 imprisonment or death.

17 A Yes, sir.

18 Q And you understand that each and every juror must be
19 able to impose either of those sentences.

20 A Yes, sir.

21 Q Now, if you were chosen for service on this jury you
22 would be sequestered, housed, in a motel for the duration of
23 the trial once you were seated. I have no way of knowing
24 how long this case would last. I would say at the very
25 outside seven to ten days. It could be less than that.

1 Except for the personal inconvenience that you would
2 suffer, would this pose a serious danger to the health or
3 well-being of yourself or of those dependent upon you?

4 A I don't believe so.

5 Q Thank you for answering my questions. Please answer
6 any of Mr. Morin's questions.

7 EXAMINATION BY MR. MORIN

8 Q Good morning, Ms. Brothers. My name is Michael Morin,
9 and I, along with Keith Kelly and Jennifer Johnson,
10 represent Mr. Moore in this case.

11 I just would like to ask you a few questions based off
12 the answers you gave the judge. You told the judge that you
13 understand that Mr. Moore is presumed innocent until the
14 state proves beyond a reasonable doubt otherwise. Do you
15 understand that?

16 A Yes, sir.

17 Q Okay. And you also told the judge that you felt like
18 after you heard all of the facts and circumstances you could
19 consider a death sentence or you could impose a death
20 sentence. Is that correct?

21 A I think so.

22 Q Okay. Do you understand that the way that it's going
23 to work or the way it would work is if you were on the jury
24 and Mr. Moore was found guilty that the state would have to
25 present aggravating circumstances that the judge told you

Jury qualification -- Number 36

1 about?

2 A Yes.

3 Q Okay. And you would have to be convinced of at least
4 one. It could be more, but at least one of those
5 aggravating circumstances, you would have to be convinced of
6 that beyond a reasonable doubt before you got to the
7 decision of whether or not life or death was appropriate.

8 A Right.

9 Q Okay. And if you were convinced beyond a reasonable
10 doubt that one of those circumstances, aggravating
11 circumstances, had been proven, you say that you could give
12 the death penalty if you were convinced of that.

13 A I think so.

14 Q Okay. And in the event that you were on the jury --
15 okay, these are kind of hard questions, aren't they?

16 A Yes.

17 Q Okay. But take your time. There are no right or wrong
18 answers. I am just trying. If you were on the jury and you
19 found -- you felt as a juror that a death sentence was
20 appropriate, that was the agreement of your fellow jurors,
21 there would be a sheet with 12 lines on it, and each juror
22 would have to sign saying that they felt that death was the
23 appropriate sentence. Okay?

24 A Okay.

25 Q And if you were on the jury and that was your decision,

1 would you be able to sign on that first line saying, yes, I
2 think that is the appropriate sentence?

3 A If that was what we voted, yes.

4 Q Okay. And you may be required to come here in court
5 and stand up and say this is what I believe the sentence
6 should be or I felt this is the appropriate sentence. Could
7 you do that too?

8 A Yes, I suppose.

9 Q Okay. Thank you for your answers.

10 THE COURT: Mr. Willingham.

11 MR. WILLINGHAM: May it please the Court, Your Honor.

12 EXAMINATION BY MR. WILLINGHAM

13 Q Ms. Brothers, my name is Donnie Willingham. I'm one of
14 the deputy solicitors here in Spartanburg. This is Barry
15 Barnette and Solicitor Trey Gowdy. We're responsible for
16 the prosecution of this case.

17 I want to start out by telling you, like the judge and
18 the defense attorney, that there are no right or wrong
19 answers. Don't feel bad one way or the other, what your
20 answers are, because there are no right or wrong answers.

21 But I need to ask you about your ability to actually
22 impose the death penalty. You seem to have some hesitation
23 there. I believe your answers were, yes, I believe so and I
24 think so. What is the cause of your hesitation or
25 reluctance to come out and say yes?

Jury qualification -- Number 36

1 A Well, I have never done this before. I do believe in
2 the death penalty but not for everybody, so I can't say,
3 yes, I would feel comfortable doing this until I actually
4 have to do it and believe that that's the right thing to do.

5 Q Okay. But hearing the evidence and hearing the
6 aggravating factors, if you are convinced beyond a
7 reasonable doubt do you believe you could actually impose
8 the death penalty?

9 A Yes.

10 Q And you understand that it's never -- you always have a
11 choice between life and death. Do you understand that?

12 A Yes.

13 Q And nobody is going to tell you that you have to impose
14 death. It has got to be a personal choice you and 11 other
15 jurors make. Do you understand that?

16 A Yes, sir.

17 Q Now, I was making notes on Monday when the whole
18 panel -- this wall was open and the whole panel was here.
19 And the judge at one point had asked if anyone had ever been
20 the victim or a family member had been a victim. I made a
21 note, and I think I got it right, that you had a cousin that
22 had been stabbed to death.

23 A Yes, sir.

24 Q And can you tell us about that?

25 A He lived in Biloxi, Mississippi, alone, and it was

1 during a robbery attempt at his home.

2 Q Was anyone ever arrested for that?

3 A Yes.

4 Q What happened?

5 A Shortly thereafter a young man was arrested and was
6 prosecuted and sent to jail.

7 Q I have no other questions. Thank you very much,
8 Ms. Brothers.

9 THE COURT: Mr. Morin.

10 EXAMINATION BY MR. MORIN

11 Q Just one question. The incident that happened that you
12 described that happened in Biloxi, do you feel like that may
13 in any way affect your ability to be a juror in this case?

14 A I wouldn't think so.

15 Q Thank you.

16 THE COURT: Anything else, Solicitor?

17 MR. WILLINGHAM: No, sir, Your Honor.

18 THE COURT: Ms. Brothers, I thank you very much for
19 your participation here on Monday, as well as this day.

20 I find that you are qualified to serve as a potential
21 juror in this case. With that qualification, I'm going to
22 remind you that you are to continue my previous instructions
23 that you are not to discuss this case with anyone, whether
24 it be fellow jurors, family, friends or anyone else that you
25 might come into contact with.

1 Also, if anyone should attempt to contact you
2 concerning this case, I want you to report that to me
3 immediately, along with as much information as you can give
4 me about that situation.

5 Also, I'm going to continue my very strong instruction
6 that you are not to read, watch or listen to any news
7 accounts concerning this case. Simply put, if you are
8 selected to serve as a juror in this case, all I would want
9 you to consider is what you see and hear in this courtroom,
10 nothing more and nothing less.

11 Now, with that instructions I'm going to tell you that
12 you are going to need to go home and start packing your
13 bags, because this afternoon at 3:30 you need to come back
14 to the courthouse. Report directly to the jury assembly
15 room.

16 Leave your belongings in your vehicle, because shortly
17 after 3:30 or so we're going to impanel a jury in this case.
18 If you are selected, you're going to stay with us for the
19 duration of the trial.

20 You would be taken, along with your fellow jurors, to
21 the location where you would be staying for the balance of
22 the trial, and the jury custodians would be your supervisors
23 and take very good care of you during that period of time.

24 If you are not selected, we are going to thank you very
25 much for your having been here and send you along about your

Jury qualification -- Number 136

1 daily activities at that time.

2 So, you need to be back here at 3:30 this afternoon.

3 Report directly to the jury assembly room at that time, and
4 from there we will seek to impanel a jury in this case.

5 Have a nice time packing, and I will see you this
6 afternoon.

7 THE JUROR: Thank you.

8 (Whereupon, the juror was excused from the courtroom.)

9 THE COURT: Let the record reflect that Juror Number
10 36, Wanda Keeter Brothers, is qualified to serve as a
11 potential juror in this case pursuant to Section 16-320 of
12 our code.

13 Mary A. Ingram.

14 JUROR NUMBER 136, MARY A. INGRAM,
15 having been first duly sworn, was voir dired as follows:

16 EXAMINATION BY THE COURT

17 Q Good morning. You are Mary Ann Ingram, is that
18 correct?

19 A Yes, I am.

20 Q And, Ms. Ingram, you understand that you are under oath
21 here today.

22 A Yes, sir, I do.

23 Q And you also recall that on Monday when I excused you
24 and your fellow jurors that I gave you instructions that you
25 were not to discuss this case with anyone, that if anyone

1 attempted to contact you that you were to report that to me
2 today, and also that you were to refrain from reading,
3 watching or listening to any news accounts concerning this
4 case. Have there been any violations of my instructions?

5 A No, sir.

6 Q Ms. Ingram, during the next few minutes I'm going to
7 present some questions to you, and thereafter one of the
8 defense lawyers and one of the solicitors will also ask you
9 some questions.

10 I want you to keep in mind that we're not in any way
11 attempting to invade your privacy, however, due to the
12 nature of the proceedings that we are about this week it's
13 extremely important that certain questions are asked and
14 answered.

15 I want you to keep in mind that there are absolutely no
16 right or wrong answers to these questions. So, if you
17 would, please just answer them openly and honestly and
18 fully.

19 Also, keep in mind that no one is challenging the view
20 that you that might have. We simply need to know what your
21 views are in certain areas.

22 Also, I would tell you that if you do not understand
23 the question, if you need to have it repeated, clarified or
24 anything like that, simply let me or the lawyer asking the
25 question know that, and we will accommodate you.

1 Also, I want you to listen very carefully to these
2 questions as they are presented to you, because during the
3 next few minutes we are probably going to be discussing some
4 things that you maybe have never considered prior to coming
5 to court here this week.

6 I would also tell you that the lawyers and I have
7 copies of your juror information sheet, because that was
8 extremely important to us in getting ready for today's
9 session.

10 Now, among the things that we are going to be talking
11 about during the next few minutes will include references to
12 the word penalty.

13 Now, the mere fact that I even mention that word or
14 that we talk about penalty does not indicate anything about
15 the defendant, Mr. Moore. He is presumed in the law to be
16 innocent. Do you understand that?

17 A Yes, sir.

18 Q Let's suppose that you were a juror in a criminal case,
19 Ms. Ingram. Could you listen to the law, accept and apply
20 that law as I would instruct you as the judge of this Court
21 even though you may disagree with that law that I instructed
22 you or think that it ought to be some other way?

23 A Yes, sir, I could.

24 Q Could you decide this case based solely on the evidence
25 presented here in this courtroom and disregard anything that

1 you may have heard, read or seen about the case?

2 A Yes, sir.

3 Q Now, in a criminal case the State of South Carolina has
4 the burden of proving a defendant's guilt. And the burden
5 of proof that the state must meet is proof beyond a
6 reasonable doubt.

7 A defendant has absolutely no burden, no responsibility
8 to prove his innocence. Do you understand that?

9 A Yes, sir, I do.

10 Q Could you, Ms. Ingram, depending upon the facts and
11 evidence and the law as I would instruct you in a particular
12 case, find a defendant either guilty or not guilty?

13 A Yes, sir, I could.

14 Q Now, as you know from being here on Monday with the
15 entire jury panel, I told all of you that this is a case in
16 which the State of South Carolina is seeking the death
17 penalty against the defendant.

18 As such, we are going to be involved in what is called
19 a bifurcated trial or proceeding. That simply means that
20 it's a trial divided into two parts. The first phase is
21 referred to as the guilt phase; the second phase is the
22 sentencing phase.

23 If you were a juror in such a case and if the jury had
24 found the defendant not guilty of murder in the guilt phase,
25 do you understand that the trial would end at that point in

1 time?

2 A Yes, sir, I do.

3 Q However, if you were a juror in such an instance and if
4 the jury had found the defendant guilty of murder in the
5 guilt phase, do you understand that you would then move to
6 the second or sentencing phase of that trial?

7 A Yes, sir, I do.

8 Q During that phase of the trial, Ms. Ingram, evidence
9 would be presented to the jury in the form of aggravating
10 circumstances, as well as mitigating circumstances.

11 Now, aggravating circumstances are facts, incidents,
12 details or occurrences which our state legislature, the
13 General Assembly of South Carolina, has declared by law
14 would make worse, that is to aggravate, the offense of
15 murder.

16 In other words, when there is an aggravating
17 circumstance that accompanies or is present with a murder,
18 it increases the enormity or adds to the injury of that
19 crime of murder. It's a murder committed in the commission
20 of or in connection with another crime or incident. Do you
21 understand that?

22 A Yes, sir, I do.

23 Q Mitigating circumstances are also incidents, details or
24 occurrences which, once again, our state legislature has
25 declared by law would reduce the severity of the offense or

1 crime of murder and may be considered by the jury as
2 extenuating or as reducing the degree of moral culpability
3 or responsibility for that crime of murder.

4 Do you understand what I mean when I speak of a
5 mitigating circumstance?

6 A Yes, I do.

7 Q Now, Ms. Ingram, if you were a juror in that situation,
8 the sentencing phase of a death penalty case, could you,
9 depending upon the particular facts and circumstances of
10 that case, including the consideration of aggravating, as
11 well as mitigating, circumstances and the law that I would
12 instruct you that applied to that case, return a sentence of
13 life in prison?

14 A Yes, sir, I could.

15 Q If you were a juror in that situation could you,
16 depending upon the particular facts and circumstances of
17 that case, once again, including the consideration of
18 aggravating and mitigating circumstances and the law that I
19 would instruct you that applied to that case, return a
20 sentence of death?

21 A Yes, sir, I could.

22 Q Do you understand, Ms. Ingram, that there are two
23 sentencing options that are always available to the jury in
24 the sentencing phase, that being life imprisonment or death?

25 A Yes, sir.

1 Q And do you further understand that each and every
2 member of that jury must be able to impose either of those
3 sentences?

4 A Yes, sir, I do.

5 Q Now, Ms. Ingram, if you were chosen for service on this
6 jury you would be sequestered, that means housed, in a motel
7 for the duration of the trial. I have no way of knowing how
8 long this case would last, but from the time that the jury
9 is seated until it's completed, I would say no more than
10 seven to ten days. It could be less than that.

11 Except for the personal inconvenience that you would
12 suffer, would this pose a serious danger to the health or
13 well-being of yourself or of those dependent upon you?

14 A No, sir, it would not.

15 Q Now, I know that you have a girl seven and two boys
16 five.

17 A Yes, sir.

18 Q Is there someone who could care for them while you were
19 providing this valuable service for the community?

20 A Yes, sir. Their father.

21 Q Thank you, ma'am. I appreciate you responding to my
22 questions. Please answer any questions that Mr. Morin might
23 have at this time.

24 EXAMINATION BY MR. MORIN

25 Q Good morning, Ms. Ingram. I notice from your

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1 questionnaire that your husband works at Kohler.

2 A Yes, sir.

3 Q Is that right?

4 A Correct.

5 Q How long has he been there?

6 A Almost eight years.

7 Q Okay. And I also notice that your brother works as a
8 reserve police officer.

9 A Yes, sir, he does.

10 Q For the county?

11 A For the City of Inman.

12 Q The City of Inman. Okay. Do you know what his job
13 over there entails as a reserve officers?

14 A Not too much. He has not been there but about three
15 months.

16 Q So, he hasn't been there long?

17 A No.

18 Q When you answered the judge's questions you had
19 indicated that you could give the death penalty in some
20 cases, is that right?

21 A That is right.

22 Q Okay. And is the death penalty something you had given
23 thought to before Monday when you found out this case was a
24 death penalty case?

25 A Not too much thought.

1 Q Okay. But you have some views about it, obviously.
2 Have you thought about it some?

3 A Just, just a little.

4 Q Okay. Could you share those views with us?

5 A Well, if someone has killed someone else, I could
6 consider that they should get the death penalty.

7 Q Okay. And your views about that -- most people get
8 their views from something in their life -- religion or
9 upbringing or something. Could you tell me what you think
10 your views are attributable to?

11 A Probably my upbringing.

12 Q Okay. Just a moment.

13 (Pause.)

14 Q And in a murder situation could you also be able to
15 consider life?

16 A I could.

17 Q Okay. And when you get that form that you looked at
18 before you came in here, which one of those three do you
19 think you fall under?

20 A The third juror.

21 Q Thank you very much.

22 THE COURT: Solicitor Willingham.

23 MR. WILLINGHAM: Thank you, Your Honor.

24 EXAMINATION BY MR. WILLINGHAM

25 Q Ms. Ingram, my name is Donnie Willingham. This is

Jury qualification -- Number 136

1 Barry Barnette, deputy solicitor, and Solicitor Trey Gowdy.
2 We're responsible for the prosecution of this case.

3 You said your husband has worked at Kohler for about
4 eight years.

5 A Yes, sir.

6 Q And I noticed from the information card he's an
7 inspector now.

8 A Yes.

9 Q What's he do there? What does that mean?

10 A Now he has actually transferred to packing, which is
11 putting the product into the packaging.

12 Q Okay. Did he start out as an inspector or did he go in
13 there --

14 A No. He started off as a temporary employee. He has
15 actually went through every department. He has had to learn
16 every department there.

17 Q Okay. Have you heard anything about this case before
18 today, either in the newspaper or talking to other people or
19 anything else?

20 A Not that I recall.

21 Q And whenever you were in the jury room back here
22 waiting to come out they gave you a piece of paper with
23 three type of jurors on there.

24 Based on your answers to the Court and to the defense,
25 you are basically a type three juror. Is that fair?

1 A That's fair.

2 Q Thank you.

3 MR. WILLINGHAM: Your Honor, I have no other questions.

4 THE COURT: Anything else, Mr. Morin?

5 MR. MORIN: No, sir.

6 THE COURT: Ms. Ingram, I want to thank you very much
7 for your participation here on Monday, as well as this day.

8 I find that you are qualified to serve as a potential
9 juror in this case. And with that qualification, I'm going
10 to remind you that you are not to discuss this case with
11 anyone that you might come in contact with, whether that be
12 your fellow jurors, family, friends or anyone else.

13 Also, if anyone attempts to contact you concerning this
14 matter, I want you to gather as much information about that
15 person or persons as you possibly can and report that to me
16 immediately, because that's a very serious matter, and I
17 would deal with the person that attempted to contact you
18 accordingly.

19 Also, I'm going to continue my very strong instruction
20 that you are not to read, watch or listen to any news
21 accounts concerning this case. Simply put, if you are
22 selected as a juror in this case all I would want you to
23 consider is what you see and hear in this courtroom, nothing
24 more and nothing less.

25 Now, with that instruction, you need to go home and

Jury qualification -- Number 136

1 start packing your bags, because you need to be back here at
2 3:30 this afternoon.

3 Leave your belongings in your vehicle. Report then
4 directly to the jury assembly room. Shortly thereafter we
5 are going to impanel a jury in this case.

6 If you are selected as a juror, you and your colleagues
7 will be taken by the jury custodians to the location that
8 you would be staying for the balance of the trial. And you
9 would remain with us until the trial is over.

10 If you are not selected, you're going to get back in
11 your car with your belongings and head back home and resume
12 your daily activities.

13 Once again, please go home and start packing. Be back
14 here at 3:30. Report directly to the jury assembly room,
15 and I'll see you at that time. Thank you, ma'am.

16 (Whereupon, the juror was excused from the courtroom.)

17 THE COURT: Let the record reflect that Juror Number
18 136, Mary Ingram, is qualified to serve as a potential juror
19 in this case pursuant to Section 16-320 of our code.

20 That brings us to at least 37, it looks like by my
21 count.

22 We are going to take a break until eleven o'clock.

23 (Whereupon, a recess was taken.)

24 THE COURT: Let me see the lawyers up here just a
25 second, please.

Jury qualification -- Number 125

1 (Bench conference held off the record.)

2 THE COURT: Panel Number 11, Juror Number 125, Linda
3 Hodge.

4 JUROR NUMBER 125, LINDA A. HODGE,
5 having been first duly sworn, was voir dired as follows:

6 EXAMINATION BY THE COURT

7 Q Good morning. You are Linda A. Hodge, is that correct?

8 A Yes, sir.

9 Q And, Ms. Hodge, you understand that you have been
10 placed under oath for this proceeding here today.

11 A Yes, sir.

12 Q And you also remember that on Monday when I dismissed
13 you and your fellow jurors that I gave you some instructions
14 that you were not to discuss this case with anyone, that if
15 anyone attempted to contact you that you were to report that
16 to me immediately upon your return to the courthouse here
17 today, and also that you were to refrain from reading,
18 watching or listening to any news accounts concerning this
19 case. Have there by any violations of my instructions?

20 A No, sir.

21 Q Now, Ms. Hodge, over the next few minutes I'm going to
22 be asking you some questions. Then one of the defense
23 lawyers, as well as one of the solicitors, will ask you some
24 questions.

25 I want you to please keep in mind that we're not in any

1 way attempting to invade your privacy, but due to the nature
2 of the proceedings that we are about here this week it's
3 extremely important that certain questions are asked and
4 answered.

5 Keep in mind that there are no right or wrong answers
6 to these questions, so answer them openly and honestly and
7 fully. No one is challenging the view that you might have.
8 We simply need to know what your views are in particular
9 areas.

10 Also, if at any time you do not understand a question
11 that I ask or one of the lawyers, simply let us know. We
12 will be glad to try to restate the question, repeat the
13 question, clarify the question. You just let us know what
14 you need.

15 Also, I would ask you to pay very close attention to
16 the questions as they are presented to you, because we're
17 probably going to be asking you some questions and talking
18 about some things that you maybe have never ever considered
19 prior to coming into court this week.

20 I would also tell you the lawyers and I have copies of
21 juror information sheet, because that was extremely
22 important to us in preparing for this process this morning.

23 Now, among the things that we're going to be talking
24 about, Ms. Hodge, will be references to the word penalty.
25 And the mere fact that I even mention that word or refer to

1 that word in no way indicates anything about the defendant,
2 Mr. Moore. He is presumed in the law to be innocent. Do
3 you understand that?

4 A Yes, sir.

5 Q Let's suppose for a few moments, Ms. Hodge, that you
6 were a juror in a criminal case.

7 Could you listen to the law, accept and apply that law
8 that I would instruct you as the judge of this Court even
9 though you may disagree with that law that I instructed or
10 think that that law should be some other way?

11 A Yes, sir.

12 Q Could you decide this case based solely on the evidence
13 presented here in this courtroom and disregard anything that
14 you may have heard, read or seen about the case?

15 A Yes, sir.

16 Q Now, in a criminal case, Ms. Hodge, the state has the
17 burden of proving guilt. And the burden of proof that the
18 state must meet is proof beyond a reasonable doubt.

19 And a defendant has absolutely no burden, no
20 responsibility to prove his innocence. Do you understand
21 that legal principle?

22 A Yes, sir.

23 Q Now, could you, depending on the facts and evidence and
24 the law as I would instruct you in a particular case, find a
25 defendant either guilty or not guilty?

1 A Yes, sir.

2 Q Now, as you know from being here on Monday when I
3 talked to the entire jury panel, this is a case in which the
4 State of South Carolina is seeking the death penalty. And,
5 as such, we're going to be engaged in what's known as a
6 bifurcated trial or proceeding. That very simply means that
7 it's a trial divided into two parts, the guilt phase and, if
8 necessary, the sentencing phase.

9 If you were a juror in such a case and if the jury
10 found the defendant not guilty of murder in the guilt phase,
11 do you understand that the trial would end at that point in
12 time?

13 A Yes.

14 Q However, if you were a juror in such a situation and
15 the jury found the defendant guilty of murder, do you
16 understand that you would then move to that second or
17 sentencing phase of the trial?

18 A Yes, sir.

19 Q In that phase of the trial, Ms. Hodge, evidence would
20 be presented to the jury in the form of aggravating
21 circumstances, as well as mitigating circumstances.

22 Now, aggravating circumstances are facts, incidents,
23 details or occurrences which the general assembly of our
24 state has declared by law would make worse, that is to
25 aggravate, the crime or offense of murder.

1 In other words, when the aggravating circumstance is
2 accompanied, accompanies a murder, goes along with a murder,
3 it increases the enormity or adds to the injury of that
4 crime of murder. It's a murder that's committed in the
5 commission of or in connection with another crime or
6 incident. Do you understand that?

7 A Yes, sir.

8 Q Now, mitigating circumstances are also incidents,
9 details or occurrences which the general assembly of our
10 state has declared by law reduces the severity of the crime
11 of murder and may be considered by the jury as extenuating
12 or as reducing the degree of moral culpability or
13 responsibility for that crime of murder. Do you understand
14 that?

15 A Yes, sir.

16 Q Now, if you were a juror in that situation, Ms. Hodge,
17 the sentencing phase, could you, depending upon the
18 particular facts and circumstances of that case, once again,
19 including the consideration of aggravating, as well as
20 mitigating, circumstances and the law that I would instruct
21 you that applied to that case, return a sentence of life in
22 prison?

23 A Yes, sir.

24 Q If you were a juror in that situation could you,
25 depending upon the particular facts and circumstances of

1 that case, once again, including the consideration of any
2 mitigating -- aggravating and mitigating circumstances as
3 well as the law that I would instruct you that applied to
4 that case, return a sentence of death?

5 A No, sir.

6 Q You could not?

7 A No, sir.

8 Q Under any circumstances?

9 A I think that there are certain crimes that warrant
10 that, but I do not think that -- it would bother me
11 long-term if I were to vote to sentence someone to die.

12 Q And you would be unable to impose that sentence?

13 A I would not like to do that, sir.

14 Q Well, I understand. You know, there are some things
15 that I don't like to do either, but what we like to do and
16 what we are asked to do and called upon to do are two
17 different things.

18 Are you telling me that you would be unable to impose a
19 death penalty or that it would be very difficult to do that?

20 A I would not want to do that, sir.

21 Q I gave you a list of three types of jurors that you
22 read before you came in here.

23 A Yes, sir.

24 Q And you recall those three. Which one do you think
25 that you fell into, Ms. Hodge?

1 A Well, I would like to think that I fell into the third
2 category, because I think you should listen to all of the
3 evidence and so forth and, based upon the facts, make a
4 decision.

5 But then, again, I would not want to sentence someone
6 to die. I know that would bother my conscience, you know,
7 irregardless. Sometimes there are such heinous crimes that
8 deserve that, but long-term I think it might affect my
9 emotional state.

10 Q And you don't believe that you could impose the death
11 penalty. Is that what you are telling me?

12 THE COURT: Mr. Morin, Mr. Kelly, excuse me.

13 MR. KELLY: Thank you, Judge.

14 EXAMINATION BY MR. KELLY

15 Q Ms. Hodge, I am Keith Kelly, and along with Michael
16 Morin and Jennifer Johnson, we represent Mr. Moore seated at
17 my right elbow.

18 And on the heels of Judge Clary's questions there, I'll
19 just ask a few questions. I understand and appreciate your
20 reluctance and careful and somber consideration of what we
21 are about here. Since Monday you have known, and of course
22 more particular today, that's what the state seeks to do in
23 this case.

24 The state would have to prove the defendant guilty of
25 any crime or the crime of murder to get to that point. Do

1 you understand that?

2 A Yes.

3 Q And you understand, of course, today he is sitting here
4 and he is presumed innocent.

5 A Yes, sir.

6 Q Now, in the event that the state managed to prove to
7 your satisfaction beyond a reasonable doubt that he was
8 guilty of murder and the second phase began called the
9 sentencing phase, Judge Clary would then read to you or in
10 some manner -- he might give to you in writing, might read
11 to you, but in some manner Judge Clary would then tell you
12 that there are several factors called aggravating
13 circumstances, and whether they be blue, green, yellow,
14 whatever they might be, but he would at that appropriate
15 time would then tell you what they are.

16 And if you and your fellow jurors were convinced beyond
17 a reasonable doubt at least one, at least one of those
18 existed, then do you understand you and your fellow jurors
19 could then consider the death penalty?

20 A Yes, sir.

21 Q You could also consider life.

22 A Yes, sir.

23 Q The choice is yours, do you understand?

24 A Uh-huh.

25 Q The law does not require you to do either one. That is

1 totally up to you. Do you understand?

2 A Uh-huh.

3 Q Now, if you were at that phase and you had considered
4 the death penalty and the vote was for the death penalty,
5 could you then impose the death penalty?

6 A No, sir.

7 Q Thank you very much.

8 THE COURT: Solicitor.

9 MR. GOWDY: No questions, Your Honor.

10 THE COURT: Ms. Hodge, I want to thank you very much
11 for your participation here on Monday, as well as this day.

12 This is going to conclude your responsibilities in this
13 case, but on behalf of the State of South Carolina, and most
14 particularly Spartanburg County, I thank you very much for
15 your having been here and participated in this process.

16 You can now go about your daily activities of being a
17 guidance counselor over at the Gaffney Middle School. Have
18 a nice day.

19 THE JUROR: Thank you.

20 (Whereupon, the juror was excused from the courtroom.)

21 THE COURT: Let the record reflect that Juror Number
22 125, Linda A. Hodge, is not qualified to serve as a
23 potential juror in this case pursuant to Section 16-320 of
24 our code as she would be unable to impose the death penalty.

25 248, Mary E. Smith.

1 JUROR NUMBER 248, MARY E. SMITH,
2 having been first duly sworn, was voir dired as follows:

3 EXAMINATION BY THE COURT

4 Q Good morning. You are Mary E. Smith, correct?

5 A Yes, sir.

6 Q And, Ms. Smith, you understand that you are under oath
7 here this day.

8 A Yes, sir.

9 Q And you also understand that on Monday when I excused
10 you and your fellow jurors that I told you that you were not
11 to discuss this case with anyone, that if anyone attempted
12 to contact you concerning this case that you were to report
13 that to me today, and that you were to refrain from reading,
14 watching or listening to any news accounts concerning this
15 case.

16 Have there been any violations of my instructions?

17 A No, sir.

18 Q Now, Ms. Smith, I'm going to be asking you a few
19 questions over the next few moments. Thereafter one of the
20 defense lawyers will ask you some questions, and then one of
21 the solicitors will ask you some questions.

22 Please keep in mind that we are not in any way
23 attempting to invade your privacy, but due to the nature of
24 the proceedings that we are about here this week it is
25 extremely important for certain questions to be asked and

1 answered.

2 Please keep in mind that there are no right or wrong
3 answers to these questions. So, if you would, please just
4 answer openly and honestly and fully.

5 Also, keep in mind that no one is challenging your
6 view. We simply need to know what your view is in a
7 particular area or areas.

8 If at any time you do not understand any of the
9 questions that I ask or a lawyer asks, simply let us know,
10 and we'll attempt to repeat the question or clarify it.

11 And, also, keep in mind that you should listen very
12 carefully to the questions that are presented to you,
13 because over the next few minutes we're probably going to be
14 talking about some things and asking you some things that
15 you maybe have never thought about prior to coming to court
16 here this week.

17 Now, the lawyers and I have copies of your information
18 sheet that you gave to the clerk of court or sent back in to
19 the clerk of court, because that was very important to all
20 of us in preparing for this session this morning.

21 Now, among the things that we're going to be talking
22 about over the next few minutes, will include references to
23 the word penalty. But the mere fact that I even mention
24 about that word or we talk about that word at all does not
25 indicate anything about the defendant, Mr. Moore. He is

1 presumed in the law to be innocent. Do you understand that?

2 A Yes, sir.

3 Q Let's suppose for a few moments, Ms. Smith, that you
4 were a juror in a criminal case.

5 Could you listen to the law, accept and apply that law
6 as I would instruct you as the judge of this Court even
7 though you may not agree with that law that I have
8 instructed or think that it should be some other way?

9 A I will listen to you.

10 Q Could you decide this case based solely on the evidence
11 presented here in this courtroom and disregard anything that
12 you may have heard, read or seen about this case?

13 A Yes, sir.

14 Q Now, Ms. Smith, in a criminal case the state has the
15 burden of proving guilt, and the burden of proof that the
16 state must meet is proof beyond a reasonable doubt.

17 A defendant has no burden, absolutely no responsibility
18 to prove his innocence. Do you understand that principle?

19 A Yes, sir.

20 Q Now, could you, depending upon the particular facts and
21 evidence and the law as I would instruct you in a case, find
22 a defendant either guilty or not guilty?

23 A Yes, sir.

24 Q Now, as you know from being here on Monday with the
25 entire jury panel, this is a case in which the State of

1 South Carolina is seeking the death penalty against the
2 defendant. And, as such, we are going to be engaged in what
3 we call a bifurcated trial or proceeding. That very simply
4 means that it's divided into two parts, the guilt phase and,
5 if necessary, a sentencing phase.

6 If you were a juror in such a case and if the jury
7 found the defendant not guilty of murder in the initial
8 guilt phase, do you understand that the trial would end
9 then?

10 A Yes, sir.

11 Q However, if you were a juror in such a situation and
12 the jury had found the defendant guilty of murder, do you
13 fully understand that you would then move to the second or
14 sentencing phase of that trial?

15 A Yes, sir.

16 Q In that phase of the trial, Ms. Smith, evidence would
17 be presented in the form of aggravating circumstances, as
18 well as mitigating circumstances.

19 Now, aggravating circumstances are facts, incidents,
20 details or occurrences which our state legislature, the
21 General Assembly of South Carolina, has declared by law
22 would make worse, that is to aggravate, the crime of murder.

23 In other words, the presence of an aggravating
24 circumstance when it goes along with or accompanies the
25 crime of murder increases the enormity or adds to the injury

1 of the crime of murder. It is a murder committed in the
2 commission of or in connection with another crime or
3 incident. Do you understand that?

4 A I think I understand it.

5 Q Do you need for me to repeat it?

6 A The aggravating part.

7 Q An aggravating circumstance is -- aggravating
8 circumstances are facts, incidents, details or occurrences
9 which the general assembly of our state has enacted by law.
10 They have picked out certain things that if they occur,
11 along with a murder, makes a murder worse than another
12 murder. It's something that increases the injury of it. Do
13 you understand that?

14 A Yes, sir.

15 Q Now, mitigating circumstances are also incidents,
16 details or occurrences which the general assembly of our
17 state has, once again, declared by law, they have enacted
18 into law, that reduces the severity of the crime of murder
19 and may be considered by the jury as extenuating or as
20 reducing the degree of responsibility for the commission of
21 that murder. Do you understand that?

22 A Yes, sir.

23 Q Now, Ms. Smith, if you were a juror in that situation,
24 talking about the sentencing phase of a death penalty case,
25 could you, depending upon the particular facts and

1 circumstances of that case, including the law that I would
2 instruct you that applied to that case, return a sentence of
3 life in prison?

4 A Yes, sir.

5 Q If you were a juror in that situation could you,
6 depending upon the particular facts and circumstances of
7 that case, once again, including the consideration of any
8 aggravating as well as mitigating circumstances and the law
9 that I would instruct you that applied to that case, return
10 a sentence of death?

11 A I believe I could.

12 Q Do you understand, Ms. Smith, that there are two
13 sentencing options that are always available to the jury in
14 the sentencing phase of a death penalty trial, that being
15 life imprisonment or death? And do you understand that each
16 and every juror that sits on that jury must be able to
17 impose both of those sentences? Do you understand that?

18 A Yes, sir.

19 Q Now, if you were chosen for service on this jury you
20 would be sequestered, which is a fancy word meaning housed,
21 in a motel for the duration of the trial. I do not know how
22 long this case would last. I would say at the outside seven
23 to ten days from the time we get it started. It could be
24 less than that.

25 Except for the personal inconvenience that you would

1 suffer, would this pose a serious danger to the health or
2 well-being of yourself or of those dependent upon you?

3 A No, sir.

4 Q Thank you for answering my questions. Please answer
5 Mr. Kelly's questions.

6 MR. KELLY: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. KELLY: Thank you, Judge.

9 EXAMINATION BY MR. KELLY

10 Q Ms. Smith, I'm Keith Kelly, and along with Michael
11 Morin and Jennifer Johnson, we represent Mr. Moore in this
12 case. This is Richard seated to my right arm.

13 In the sentencing -- well, first of all, you understand
14 that Richard, as the judge has told you, is presumed
15 innocent at this point.

16 A Yes, sir.

17 Q Now, in the event that you were selected to be on this
18 jury and in the event that the state, Mr. Gowdy and his
19 assistants, were able to prove to your satisfaction beyond a
20 reasonable doubt that Mr. Moore was guilty of murder and the
21 jury had returned a verdict of guilty, then a second phase
22 would begin. Do you understand that?

23 A Yes, sir.

24 Q That's what we lawyers call the sentencing phase. In
25 the sentencing phase you, the jury, would have the option of

1 returning life or death. Do you understand?

2 A Yes, sir.

3 Q And do you also understand that nobody, not us, not the
4 state, not the judge, no book, no rule anywhere, requires
5 you to do either one? It's totally up to you and the other
6 11 jurors. Do you understand?

7 A Yes, I do.

8 Q Okay. Now, at some point if one of those aggravating
9 circumstances that Judge Clary would tell you about at the
10 appropriate time, at some point if one of those, one or more
11 of those, happened to be proved to your satisfaction beyond
12 a reasonable doubt that it existed, at that point you and
13 your jurors might vote for death. Do you understand?

14 A Yes, I do.

15 Q Okay. If you did that, there would be a form that
16 would be provided by perhaps the clerk or somebody. It
17 would be a sheet of paper with some writing on it and some
18 lines. And on there you would be asked to sign your name on
19 there as affirming your vote. Could you do that?

20 A Yes, sir.

21 Q Okay. And the last thing that you might be required to
22 do then is once everybody came back into the courtroom if
23 you were seated over here, you might be required to stand up
24 and say, along with your other 11 jurors, but you yourself
25 might have to stand and say that's my vote, that's my

1 signature, that's my vote. Could you do that?

2 A Yes, sir.

3 Q Ms. Smith, you indicated that you have no bumper
4 stickers on your automobile. But do you have a flag or
5 anything? Some people are flying a flag these days.

6 A No, sir. I don't have anything on my car.

7 Q Nothing on your car. What about your home?

8 A I have a South Carolina E. T. V. sticker.

9 Q Okay. Do you fly a flag at home?

10 A No, I don't.

11 Q Thank you very much.

12 MR. GOWDY: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 EXAMINATION BY MR. GOWDY

15 Q Good morning, Ms. Smith.

16 A Good morning.

17 Q My name is Trey Gowdy. I'm the solicitor here in
18 Spartanburg. And seated with me at the state's table is
19 Barry Barnette in the middle and Donnie Willingham to my
20 left. They're my deputy solicitors.

21 I want to thank you, and I know I thank you on behalf
22 of Mr. Kelly and the state as well, for filling out this
23 questionnaire. I won't ask a lot of personal questions.
24 Frankly, we wouldn't ask you except for being in this
25 situation.

1 A I understand.

2 Q I noticed that under prior military service you put W.

3 A. C. And I am going to show my ignorance and ask you what
4 that is.

5 A Women's Army Corps.

6 Q Okay.

7 THE COURT: It's called a WAC, Solicitor.

8 MR. GOWDY: I'm sorry, Your Honor.

9 THE COURT: I'm a little bit older than you are.

10 MR. GOWDY: I should know that, but I didn't. Thank
11 you.

12 Q Again, another personal question that I wouldn't ask
13 you but for this situation.

14 I noticed you listed your faith as Jehovah's Witness.

15 A Yes, I did.

16 Q And do you attend a Jehovah's Witness church in
17 Spartanburg?

18 A Yes, I do.

19 Q And do you know whether or not the church, that
20 Jehovah's Witness church, has a position on capital
21 punishment, for or against?

22 A Oh, my belief on that is what the Bible says. The
23 nation of Israel was God's chosen people. When a serious
24 crime was committed, they were brought together. The
25 evidence was presented, and if the person's found guilty,

1 the judgment was appointed to the older men. Then it was up
2 to the individual to put that person to death.

3 And I look at it like this. If the evidence brought
4 before me, I understand it and it is proven what it may be,
5 I would render a partial judgment based on that.

6 Q And that, that judgment based on the law and the facts,
7 if death and life were an option, you would be able to not
8 only consider it but, in theory, impose either one of those
9 depending on the facts and circumstances.

10 A Right, based on my Bible's contents.

11 Q Yes, ma'am. Thank you very much for answering my
12 questions.

13 MR. KELLY: Nothing.

14 THE COURT: Ms. Smith, I want to thank you very much
15 for your participation here on Monday, as well as this day.

16 I find that you are qualified to serve as a potential
17 juror in this case. And with that qualification, I'm going
18 to remind you that you are not to discuss this case with
19 anyone that you come into contact with, whether it be a
20 fellow juror, family, friends or anyone else.

21 And if anyone should attempt to contact you concerning
22 this case, I want you to gather as much information as you
23 can about that particular person and report that to me
24 immediately, because that's a very serious matter, and I
25 would deal with the person that attempted to contact you

1 accordingly.

2 Also, I'm going to continue my very strong instruction
3 that you're not to read, watch or listen to any news
4 accounts concerning this case. Very simply put, if you were
5 selected to serve as a juror in this matter, all I would
6 want you to consider is what you would see and hear in this
7 courtroom, nothing more and nothing less.

8 Now, with that instruction, I'm going to have to get
9 you moving kinda quickly, because you need to go home and
10 start packing your bags, because you need to be back here at
11 this courthouse at 3:30 this afternoon.

12 All of the qualified jurors are going to reconvene here
13 at 3:30 this afternoon in the jury assembly room. You need
14 to leave your luggage in your vehicle. If you are selected
15 as a juror in this case, the jury custodians would then take
16 you and your fellow jurors to the motel that you would be
17 staying at for the duration of the trial. And you would
18 stay with us until we finished the trial.

19 If you are not selected, your belongings are still
20 going to be in your car. And you're going to get in it and
21 go back home and go about your daily activities with our
22 thanks for having been here.

23 So, you've got about four hours the way I calculate it.
24 I don't know how quickly you pack. My wife, it takes her a
25 long time to get packed. It doesn't take me that long, but

Jury qualification -- Number 210

1 it takes her a little bit longer. So, you might need to get
2 on home and start getting busy. You need to be back here in
3 the jury assembly room at 3:30.

4 Thank you, ma'am. I look forward to seeing you then.

5 (Whereupon, the juror was excused from the courtroom.)

6 THE COURT: Let the record reflect that Juror Number
7 248, Mary E. Smith, is qualified to serve as a potential
8 juror in this case pursuant to Section 16-320 of our code.

9 Roger D. Peace, 210.

10 JUROR NUMBER 210, ROGER D. PEACE,
11 having been first duly sworn, was voir dired as follows:

12 EXAMINATION BY THE COURT

13 Q Good morning. You are Roger Peace, is that correct?

14 A Yes, sir.

15 Q And, Mr. Peace, you understand that you have been
16 placed under oath for these proceedings here today. And you
17 recall that when I sent you home the other Monday afternoon
18 that I instructed you that you were not to discuss this case
19 with anyone, that if anyone attempted to contact you, that
20 you were to report that to me, and also that you were to
21 refrain from reading, watching or listening to any news
22 accounts concerning this matter. Have there been any
23 violations of my instructions?

24 A No, sir.

25 Q Now, Mr. Peace, over the next few minutes I'm going to

1 ask you some questions. Thereafter, one of the defense
2 lawyers and then one of the state's lawyers will ask you
3 some questions.

4 Please keep in mind that we're not in any way
5 attempting to invade your privacy, but because of the
6 proceedings that we are about this week it's necessary that
7 certain questions are asked and answered.

8 Also, I want you to understand that there are no right
9 or wrong answers to these questions. If you would, just
10 answer them openly and honestly and fully.

11 Please keep in mind that no one is challenging the view
12 that you might have. We simply need to know what your views
13 are in particular areas.

14 Also, if at any time you do not understand a question
15 that's presented to you, simply let me or the lawyer asking
16 the question know. We will attempt to repeat the question,
17 clarify it, explain it so that you can give us an answer to
18 it.

19 Also, I want you to listen very carefully to these
20 questions, because we're probably going to be asking you
21 about some things over the next few minutes that you have
22 never considered prior to coming to court here this week.

23 I would also tell you that the lawyers and I have
24 copies of your juror information sheet, because that was
25 extremely important to us in preparing for this day.

1 Now, among other things, we're going to be talking
2 about or referring to the word penalty, but the mere fact
3 that I even use that word or mention that word does not in
4 any way indicate anything about the defendant, Mr. Moore.
5 He is presumed in the law to be innocent. Do you understand
6 that?

7 A Yes, sir.

8 Q Let's assume for a few moments that you were a juror in
9 a criminal case.

10 Could you listen to the law, accept and apply that law
11 as I would instruct you as the judge of this Court even
12 though you may disagree with the law that I instructed or
13 think that it should be some other way?

14 A Yes, sir.

15 Q Could you decide this case based solely on the evidence
16 presented here in this courtroom and disregard anything that
17 you may have heard, read or seen about the case?

18 A Yes, sir.

19 Q Now, in a criminal case, Mr. Peace, the state has the
20 burden of proving a defendant's guilt. And the state's
21 burden of proof is what we call proof beyond a reasonable
22 doubt.

23 A defendant has absolutely no burden, no responsibility
24 to prove his innocence. Do you understand that legal
25 principle?

1 A Yes, sir.

2 Q Could you, depending on the facts and the evidence and
3 the law as I would instruct you in a particular case, find a
4 defendant either guilty or not guilty?

5 A Yes, sir.

6 Q Now, as you know from being here on Monday with the
7 entire jury panel, I informed all of you at that time that
8 this is a case in which the State of South Carolina is
9 seeking the death penalty against the defendant.

10 And, as such, we're going to be engaged in what is
11 called a bifurcated trial. It very simply means it's
12 divided into two parts, guilt phase and, if necessary, the
13 sentencing phase.

14 If you were a juror in such a case and if the jury had
15 found the defendant not guilty of murder in the initial
16 guilt phase, do you understand the trial would end then?

17 A Yes, sir.

18 Q However, if you were a juror in such a case and if the
19 jury found the defendant guilty of murder in that guilt
20 phase, do you understand that you would then move to the
21 second, sentencing phase?

22 A Yes, sir.

23 Q Mr. Peace, in that phase of the trial evidence would be
24 presented to the jury in the form of aggravating, as well as
25 mitigating, circumstances.

1 Now, aggravating circumstances are facts, incidents,
2 details or occurrences which our state legislature, the
3 General Assembly of South Carolina, has declared by law
4 would make worse, that is to aggravate, the crime of murder.

5 In other words, when there is the presence of an
6 aggravating circumstance that accompanies a murder, it
7 increases the enormity or adds to the injury of that crime
8 of murder. It is a murder committed in the commission of or
9 in connection with another crime or incident. Do you
10 understand that?

11 A Yes, sir.

12 Q Now, mitigating circumstances are also incidents,
13 details or occurrences which our state legislature, the
14 general assembly, has, once again, declared by law that
15 reduces the severity of the crime of murder and may be
16 considered by the jury as extenuating or as reducing the
17 degree of responsibility for that crime of murder. Do you
18 understand that?

19 A Yes, sir.

20 Q Now, Mr. Peace, if you were a juror in that particular
21 situation, the second phase, the sentencing phase of a death
22 penalty case, could you, depending upon the particular facts
23 and circumstances of that case, including the consideration
24 of aggravating and mitigating circumstances and the law that
25 I would instruct you that applied to that case, return a

1 sentence of life in prison?

2 A Yes.

3 Q If you were a juror in that situation could you,
4 depending upon the particular facts and circumstances of
5 that case, once again, including the consideration of
6 aggravating, as well as mitigating, circumstances and the
7 law that I would instruct you that applied to that case,
8 return a sentence of death?

9 A Yes, sir.

10 Q Now, Mr. Peace, do you understand that there are two
11 sentencing options that are always available to the jury in
12 the sentencing phase of a death penalty trial, that being
13 life imprisonment or death?

14 A Yes, sir.

15 Q And do you understand that each and every juror that
16 sits in that jury panel must be able to impose both of those
17 sentences?

18 A Yes, sir.

19 Q Now, if you were chosen for service on this jury, Mr.
20 Peace, you would be sequestered, which is kind of a fancy
21 word meaning housed in a motel, for the duration of the
22 trial. I have no way of knowing how long this case will
23 last. I have an idea that it will be no more than seven to
24 ten days. It could be less than that.

25 Except for the personal inconvenience that you would

1 suffer, would this pose a serious danger to the health or
2 well-being of those dependent upon you?

3 A Yes, sir, not the health, but the well-being.

4 Q All right.

5 A I run a business, and I have to be there seven days a
6 week. And that would be the only problem.

7 Q It does not operate without you?

8 A No, sir.

9 Q And there is no one to operate it if you're not there?

10 A No, sir. I could probably do it for maybe two days,
11 but not seven.

12 THE COURT: Anything from you, Mr. Morin?

13 MR. MORIN: No, sir.

14 THE COURT: Solicitor, anything from you?

15 MR. BARNETTE: No, sir.

16 THE COURT: Well, I want to thank you very much for
17 being here, Mr. Peace. I understand the situation that you
18 are up against with your business and the fact that you have
19 been here ready and willing and able to participate in this
20 process.

21 Pursuant to Section 14-7-860 I find that you -- your
22 services are required at your business, and I am going to
23 excuse you from further participation here. Thank you, sir.

24 (Whereupon, the juror was excused from the courtroom.)

25 THE COURT: Number 140, Merita F. Jeter.

Jury qualification -- Number 140

1 JUROR NUMBER 140, MERITA F. JETER,
2 having been first duly sworn, was voir dired as follows:

3 EXAMINATION BY THE COURT

4 Q Good morning. You are Merita F. Jeter, is that
5 correct?

6 A Yes.

7 Q And, Ms. Jeter, you understand that you have been
8 placed under oath here today.

9 A Yes.

10 Q And you also understand that when I sent you away from
11 here on Monday that I gave you instructions that you were
12 not to discuss this case with anyone, that if anyone
13 attempted to contact you that you were to report that to me,
14 and also that you were not to read, watch or listen to any
15 news accounts concerning this case.

16 A That's correct.

17 Q Have there been any violations of my instructions?

18 A No.

19 Q And, Ms. Jeter, I asked you on Monday if the
20 information that you had provided to me in here was correct
21 in the juror questionnaire, and you stated that it was,
22 correct?

23 A Yes.

24 Q Now, Ms. Jeter, I am going to ask you a number of
25 questions. Thereafter, one of the defense lawyers and one

1 of the solicitors will ask you some questions.

2 Please keep in mind that we are not in any way
3 attempting to invade your privacy, but due to the nature of
4 the proceedings that we are about this week it's extremely
5 important that we ask certain questions and have them
6 answered by you.

7 Please understand that there are no right or wrong
8 answers to these questions. We simply need for you to
9 answer them openly and honestly and fully.

10 And keep in mind that no one is challenging your view.
11 We simply need to know what your views are in particular
12 areas.

13 Also, I would tell you that if at any time you do not
14 understand one of my questions or one of the lawyer's
15 questions, if you need for us to repeat that question or
16 clarify it in any way, just let us know, and we will do
17 that.

18 And, also, you need to listen very carefully to the
19 questions that are presented to you, because over the next
20 few minutes we are probably going to be asking you about
21 some things that you maybe never have considered prior to
22 coming to court here this week.

23 I would also tell you that the lawyers and I have
24 copies of your juror information sheet, because that was
25 important to us in preparing for today.

1 Now, over the next few minutes, Ms. Jeter, we're going
2 to be talking about several things. And one of the things
3 that we will talk about is the word penalty, but the mere
4 fact that I even mention that word or that we discuss that
5 word does not in any way indicate anything about the
6 defendant, Mr. Moore. Do you understand that he is presumed
7 innocent in the law?

8 A Yes.

9 Q Now, let's suppose for a few minutes that you were a
10 juror in a criminal case, Ms. Jeter.

11 Could you listen to the law, accept and apply that law
12 as I would instruct you as the judge of this Court even
13 though you may disagree with the law that I had instructed
14 or think that it should be some other way?

15 A Yes.

16 Q Could you decide this case based solely on the evidence
17 presented here in this courtroom and disregard anything that
18 you may have heard, read or seen about this case?

19 A Yes.

20 Q Now, in a criminal case, Ms. Jeter, the State of South
21 Carolina has the burden of proof. And the burden of proof
22 that the state must meet is proof of the defendant's guilt
23 beyond a reasonable doubt.

24 A defendant has absolutely no burden, no responsibility
25 to prove himself innocent. Do you understand that legal

1 principle?

2 A Yes.

3 Q Could you, depending upon the facts and the evidence
4 and the law as I would instruct you in a particular case,
5 find a defendant either guilty or not guilty?

6 A Yes.

7 Q Now, as you know from being here on Monday with the
8 entire jury panel, I told all of you at that time that this
9 is a case in which the State of South Carolina is seeking
10 the death penalty. And, as such, we are going to be engaged
11 in what we call a bifurcated proceeding. It's kind of a big
12 word that simply means that it's divided into two parts, a
13 guilt phase; and, if necessary, the second part is the
14 sentencing phase.

15 If you were a juror in such a case and if the jury
16 found the defendant not guilty of murder in the first phase,
17 the guilt phase, do you understand the trial would end at
18 that point in time?

19 A Yes.

20 Q However, if you were a juror in such a case and the
21 jury had found the defendant guilty of murder in the guilt
22 phase, do you understand that you would then move to the
23 second or sentencing phase of that trial?

24 A Yes.

25 Q Now, in that phase of the trial, Ms. Jeter, evidence

1 would be presented to the jury in the form of aggravating
2 circumstances, as well as mitigating circumstances.

3 Now, aggravating circumstances are facts, incidents,
4 details or occurrences which the general assembly of our
5 state, that's the state legislature that meets in Columbia,
6 has declared by law would make worse, that is to aggravate,
7 the crime of murder.

8 In other words, when an aggravating circumstance goes
9 along with or accompanies a murder, it increases the
10 enormity or injury of the crime of murder. It is a murder
11 that's committed in the commission of or in connection with
12 another crime or incident. Do you understand that?

13 A Yes.

14 Q Now, mitigating circumstances are also incidents,
15 details or occurrences which our state legislature has, once
16 again, declared by law that reduces the severity of the
17 crime of murder and may be considered by the jury as
18 extenuating or as reducing the degree of responsibility for
19 that crime of murder. Do you understand that?

20 A Yes.

21 Q Ms. Jeter, if you were a juror in such a situation, the
22 sentencing phase, could you, depending on the particular
23 facts and circumstances of that case, including the
24 consideration of any aggravating and mitigating
25 circumstances and the law that I would instruct you that

1 applied to that case, return a sentence of life in prison?

2 A Yes.

3 Q If you were a juror in that situation could you,
4 depending upon the particular facts and circumstances of
5 that case, once again, including the consideration of all
6 aggravating and mitigating circumstances and the law that I
7 would instruct you that applied to that case, return a
8 sentence of death?

9 A No.

10 Q You could not under any circumstances?

11 A No.

12 Q Thank you, ma'am. Mr. Morin or Mr. Kelly?

13 MR. KELLY: Thank you, Your Honor.

14 EXAMINATION BY MR. KELLY

15 Q Ma'am, Ms. Jeter, I am just going to ask you a few
16 questions so that I can understand and make sure.

17 Okay. My name is Michael Morin, and I, along with
18 Keith Kelly and Jennifer Johnson, represent Mr. Moore. And
19 I just want to go over a few things.

20 Do you understand that in this case Mr. Moore is
21 presumed innocent?

22 A Yes.

23 Q Okay. If, in the event the state proved that Mr. Moore
24 was guilty of murder, only then would you get to the second
25 phase where the state would present their aggravating

1 circumstances which the judge has explained to you. Do you
2 understand that?

3 A Yes.

4 Q Okay. And they would have to -- they would have to
5 convince you beyond a reasonable doubt that at least one of
6 those aggravating circumstances existed before you and the
7 other jurors would decide whether or not to give life or
8 death.

9 A Yes.

10 Q Okay. And if the state had proven to you that one of
11 those, one or more of those, aggravating circumstances had
12 existed beyond a reasonable doubt -- if they convinced you
13 of that would you be able to impose a death sentence if they
14 had convinced you of that aggravating circumstance?

15 A No.

16 Q Thank you very much, ma'am.

17 A You are welcome.

18 THE COURT: Anything from the state?

19 MR. BARNETTE: Nothing from the state, Your Honor.

20 THE COURT: Ms. Jeter, I want to thank you very much
21 for being here and participating in our process on Monday,
22 as well as this day.

23 This is going to conclude your responsibilities here
24 this week. But on behalf of the State of South Carolina,
25 and most particularly Spartanburg County, I thank you for

Jury qualification -- Number 118

1 your being here and participating in this process.

2 You may now resume your daily activities. Thank you
3 very much for being here.

4 THE JUROR: Thank you.

5 (Whereupon, the juror was excused from the courtroom.)

6 THE COURT: Let the record reflect that Juror Number
7 140, Merita Jeter, is not qualified to serve as a potential
8 juror in this case pursuant to Section 16-320 as she would
9 be unable to impose the death penalty.

10 Number 118, Mitchell Harris.

11 JUROR NUMBER 118, MITCHELL HARRIS,
12 having been first duly sworn, was voir dired as follows:

13 EXAMINATION BY THE COURT

14 Q Good morning. You are Mitchell Harris.

15 A Yes, sir.

16 Q And, Mr. Harris, you understand that you are under oath
17 here today.

18 A Yes, sir.

19 Q And you also recall that on Monday that I told you
20 before you left the courthouse that you were not to discuss
21 this case with anyone, that if anyone attempted to contact
22 you that you were to report that to me today, and that you
23 also were not to read, watch or listen to any news accounts
24 concerning this case. Have there been any violations of my
25 cautionary instructions?

1 A No, sir.

2 Q Mr. Harris, over the next few minutes I'm going to ask
3 you some questions. Thereafter, one of the lawyers for the
4 defendant and one of the solicitors will ask you some
5 questions.

6 Please keep in mind that we are not in any way
7 attempting to invade your privacy, but due to the nature of
8 the proceedings that we are about here this week it's
9 extremely important that certain questions are asked and
10 answered.

11 Please keep in mind that there are no right or wrong
12 answers to these questions. So, if you would, just answer
13 them openly and honestly and fully.

14 And keep in mind that no one is challenging your view.
15 We simply need to know what your views are in certain areas.

16 Also, if at any time you do not understand one of my
17 questions or one of the lawyer's questions, simply let us
18 know. We'll attempt to repeat it or clarify it, however you
19 need it to be arranged so that we can make sure that you
20 understand what we are trying to find out.

21 Also, I want you to listen carefully to these
22 questions, because we are probably going to be asking you
23 questions about things that you have never considered prior
24 to coming to court here this week.

25 I would also tell you that the lawyers and I have

1 copies of your juror questionnaire, because that was
2 important to us in preparing for this day.

3 Now, among the things, Mr. Harris, that we're going to
4 be talking about over the next few minutes, will include
5 reference to the word penalty, but the mere fact that we
6 talk about or even mention the word penalty does not in any
7 way indicate anything about the defendant, Mr. Moore. He is
8 presumed in the law to be innocent. Do you understand that?

9 A Yes, sir.

10 Q Now, let's assume that you were a juror in a criminal
11 case, Mr. Harris.

12 Could you listen to the law, accept and apply that law
13 as I would instruct you as the judge of this Court even
14 though you may disagree with that law that I instructed or
15 think it ought to be some other way?

16 A Yes, I could do that.

17 Q Could you decide this case based solely on the evidence
18 presented here in this courtroom and disregard anything that
19 you may have heard, read or seen about this case?

20 A Could you repeat that again, please?

21 Q Could you decide this case based solely on the evidence
22 presented here in this courtroom and disregard anything that
23 you may have heard, read or seen about the case?

24 A No, sir.

25 Q You say that you could not?

1 A No, sir.

2 Q Do you know anything about this case?

3 A No, sir.

4 Q So, would you be able to decide it solely on the
5 evidence that you would hear in this courtroom?

6 A Okay. Yes, sir, I could.

7 Q Now, in a criminal case, Mr. Harris, the state has the
8 burden of proving a defendant's guilt, and the burden of
9 proof that the state must meet is proof beyond a reasonable
10 doubt.

11 A defendant has no burden, absolutely no responsibility
12 to prove his innocence. Do you understand that legal
13 principle?

14 A Yes, sir.

15 Q Could you, depending on the facts and evidence and the
16 law that I would instruct you in a particular case, find a
17 defendant either guilty or not guilty?

18 A Yes, I could.

19 Q Now, Mr. Harris, as you recall from being in court the
20 other day with the entire jury panel, I informed all of you
21 at that time that this is a case in which the State of South
22 Carolina is seeking the death penalty. And, as such, we are
23 going to be engaged in what we call a bifurcated trial
24 proceeding. That's kind of a big word that very simply
25 means it's divided into two parts, a guilt phase, a

1 sentencing phase, if necessary.

2 If you were a juror in such a situation and the jury
3 found the defendant not guilty of murder in the first phase,
4 do you understand that the trial would end at that time?

5 A Yes, sir.

6 Q However, if you were a juror in that situation and the
7 jury had found the defendant guilty of murder, do you fully
8 understand that you would then move to the second or
9 sentencing phase of that trial?

10 A Yes, sir.

11 Q During that phase of the trial, Mr. Harris, evidence
12 would be presented to the jury in the form of aggravating
13 circumstances, as well as mitigating circumstances.

14 Now, aggravating circumstances are facts, incidents,
15 details or occurrences which the general assembly of our
16 state, the state legislature that meets in Columbia, has
17 declared by law would make worse, that is to aggravate, the
18 crime of murder.

19 In other words, an aggravating circumstance when it
20 goes along with or accompanies a murder increases the
21 enormity and adds to the injury of the crime of murder.
22 It's a murder that's committed in the commission of or in
23 connection with another crime or incident. Do you
24 understand that?

25 A Yes, sir.

1 Q Now, mitigating circumstances are also incidents,
2 details or occurrences which our general assembly of South
3 Carolina has, once again, declared by law reduces the
4 severity of the crime of murder and may be considered by the
5 jury as extenuating or as reducing the degree of
6 responsibility for the crime of murder. Do you understand
7 what I mean by mitigating circumstances?

8 A No, sir.

9 Q A mitigating circumstance is something that the jury
10 would consider, that the legislature has enacted into law or
11 any other nonstatutory mitigating circumstance, that the
12 jury could consider as a reason for the commission of the
13 crime of murder, that would lessen the offense. Do you
14 understand that?

15 A Yes, sir.

16 Q If you were a juror in such a situation, Mr. Harris,
17 the sentencing phase, could you, depending upon the
18 particular facts and circumstances of that case, including
19 the consideration of aggravating, as well as mitigating,
20 circumstances and the law that I would instruct you that
21 applied to that case, return a sentence of life in prison?

22 A Yes.

23 Q If you were a juror in that situation, Mr. Harris,
24 could you, depending on the particular facts and
25 circumstances of that case, once again, including the

1 consideration of all aggravating and mitigating
2 circumstances and the law that I would instruct you that
3 applied to that case, return a sentence of death?

4 A No, sir.

5 Q You could not?

6 A No, sir.

7 Q Under any circumstances?

8 A Under any circumstances.

9 THE COURT: Mr. Morin, Mr. Kelly.

10 MR. KELLY: Nothing, Your Honor.

11 THE COURT: Mr. Solicitor.

12 MR. WILLINGHAM: No, sir, Your Honor.

13 THE COURT: Mr. Harris, I want to thank you very much
14 for your being here and participating in our process on
15 Monday and today.

16 This is going to end your responsibilities, but I want
17 to thank you on behalf of the State of South Carolina, but
18 most particularly on behalf of Spartanburg County, for
19 participating in our process and being so forthright in your
20 answers.

21 You may now return to your regularly scheduled
22 activities. You are excused.

23 THE JUROR: Thank you, sir.

24 THE COURT: Thank you, sir.

25 (Whereupon, the juror was excused from the courtroom.)

1 THE COURT: Let the record reflect that Juror Number
2 118, Mitchell Harris, is not qualified to serve as a
3 potential juror in this case pursuant to Section 16-320 of
4 our code as he would be unable to impose the death penalty.
5 Fifty-seven, Jane O. Clayton.

6 JUROR NUMBER 57, JANE O. CLAYTON,
7 having been first duly sworn, was voir dired as follows:

8 EXAMINATION BY THE COURT

9 Q Good afternoon. You are Jane O. Clayton, correct?

10 A I am.

11 Q And, Ms. Clayton, do you understand that you have been
12 placed under oath here today?

13 A Yes, sir.

14 Q And you also remember that on Monday when I dismissed
15 you and your colleagues from the courtroom that I gave you
16 some instructions that you were not to discuss this case
17 with anyone, that if anyone attempted to contact you that
18 you were to report that to me upon your return to the
19 courthouse today, and also that you were not to read, watch
20 or listen to any news accounts concerning this case. Have
21 there been any violations of my cautionary instructions?

22 A No, sir.

23 Q Now, Ms. Clayton, I'm going to ask you some questions,
24 and thereafter one of the defense lawyers, as well as one of
25 the state's lawyers, may want to ask you some questions.

1 Please understand that we are not in any way attempting
2 to invade your privacy, but because of the proceeding that
3 we are about this week it's extremely important that certain
4 questions are asked and answered.

5 Please keep in mind that there are no right or wrong
6 answers to these questions. Just answer them openly and
7 honestly and fully.

8 And, also, keep in mind that no one is challenging your
9 view. We simply need to know what your views are in certain
10 areas.

11 Also, if I or one of the lawyers state a question that
12 you do not understand, if you need to have repeated or
13 clarified in any way, all you have to do is let us know
14 that, and we will be glad to accommodate you.

15 Furthermore, I'm going to tell you to pay very close
16 attention to these questions, because over the next few
17 minutes we're probably going to ask you about some things
18 that you have never considered prior to coming to court here
19 this week.

20 I would also tell you that the lawyers and I have
21 copies of your juror information sheet, because that was
22 important to us in preparing for today.

23 Now, among the things that we're going to be discussing
24 over the next few minutes, Ms. Clayton, will include
25 references to the word penalty. But the mere fact that I

1 even mention that word or use that word does not in any way
2 indicate anything about the defendant, Mr. Moore. He is
3 presumed in the law to be innocent. Do you understand that?

4 A Yes, sir.

5 Q Let's assume for a few moments that you were a juror in
6 a criminal case.

7 Could you listen to the law, accept and apply that law
8 as I would instruct you as the judge of this Court even
9 though you may disagree with that law that I instructed or
10 think that it should be some other way?

11 A Yes.

12 Q Could you decide this case based solely on the evidence
13 presented here in this courtroom and disregard anything that
14 you may have heard, read or seen about the case?

15 A Yes, sir.

16 Q Now, in a criminal case, Ms. Clayton, the state has the
17 burden of proving guilt. The burden of proof which the
18 state must meet is proof beyond a reasonable doubt.

19 A defendant has absolutely no burden, no responsibility
20 to prove his innocence. Do you understand that legal
21 principle?

22 A Yes, sir.

23 Q Now, could you, depending upon the facts and evidence
24 and the law as I would instruct you in a particular case,
25 find a defendant either guilty or not guilty?

Jury qualification -- Number 57

1 A I could.

2 Q Now, as you know from being here on Monday when the
3 entire jury panel was together, this is a case in which the
4 State of South Carolina is seeking the death penalty. And,
5 as such, we're going to be engaged in what's called a
6 bifurcated trial or proceeding, which is kind of a
7 high-dollar word that means that it's divided into two
8 parts, the guilt phase and, if necessary, the sentencing
9 phase.

10 If you were a juror in such a case and if the jury
11 found the defendant not guilty of murder in the guilt phase,
12 do you understand that the trial would end at that point?

13 A Yes, sir.

14 Q However, if you were a juror in such a case and if the
15 jury had found the defendant guilty of murder in the guilt
16 phase, do you fully understand that you would then move to
17 the second or sentencing phase of that trial?

18 A Yes, sir.

19 Q Now, during that phase of the trial, Ms. Clayton,
20 evidence would be presented in the form of aggravating, as
21 well as mitigating, circumstances.

22 Now, aggravating circumstances are facts, incidents,
23 details or occurrences which our state legislature, the
24 General Assembly of South Carolina, has declared by law
25 would make worse, that is to aggravate, the crime of murder.

1 In other words, the presence of an aggravating
2 circumstance when it goes along with or accompanies the
3 crime of murder adds to the enormity or the injury of that
4 crime of murder. It's a murder that's committed in the
5 commission of or in connection with another crime or
6 incident. Do you understand that?

7 A Yes, sir.

8 Q Now, mitigating circumstances are also incidents,
9 details or occurrences which the general assembly of our
10 state has, once again, declared by law which reduces the
11 severity of the offense of murder and may be considered by
12 the jury as extenuating or as reducing the degree of moral
13 culpability or responsibility for that crime of murder. Do
14 you understand what I mean when I speak of a mitigating
15 circumstance?

16 A Yes, sir.

17 Q If you were a juror in that situation, Ms. Clayton, the
18 sentencing phase, could you, depending upon the particular
19 facts and circumstances of that case, including the
20 consideration of aggravating, as well as mitigating,
21 circumstances and the law that I would instruct you that
22 applied to that case, return a sentence of life in prison?

23 A Yes, sir.

24 Q If you were a juror in that situation could you,
25 depending upon the particular facts and circumstances of

1 that case, once again, including any and all aggravating, as
2 well as mitigating, circumstances and the law that I would
3 instruct you that applied to that case, return a sentence of
4 death?

5 A It would be hard.

6 Q Do you understand that there are two sentencing options
7 that are always available to the jury in the sentencing
8 phase of a death penalty trial, that being life imprisonment
9 or death?

10 A Uh-huh.

11 Q And do you fully understand that each and every member
12 of the jury that is seated, that they would have to be able
13 to impose both of those sentences? Do you understand that?

14 A Yes, sir.

15 Q And are you telling me that it would be difficult but
16 you would be able to do it under the -- under particular
17 circumstances?

18 A I would.

19 Q And when you were back in the jury room before you came
20 in here you were given a sheet of three types of jurors.
21 Could you tell me which category you fell into?

22 A I feel like I feel into the third one.

23 Q Now, Ms. Clayton, if you were chosen for service on
24 this jury you would be sequestered, which is, once again, a
25 fancy word for housed, in a motel for the course of the

1 trial. I do not know how long this case would last. I
2 would say at the outside probably seven to ten days. It
3 could be much less than that.

4 Except for the personal inconvenience that you would
5 suffer, would this pose a serious danger to the health or
6 well-being of yourself or of those dependent upon you?

7 A It would not pose a threat for me or my immediate
8 family, however, I am a caregiver for an aunt and uncle who
9 never had children in their 90's, and I am in the process of
10 putting them in a nursing facility and doing Medicaid
11 interviews and that whole process. And I am an evening
12 student at Spartanburg Tech. So, if I miss more than six
13 classes, I automatically fail that course.

14 Q What are you taking at Spartanburg Tech?

15 A Math 160, business math.

16 Q And is there anyone else who could care for your
17 relatives if you were sequestered?

18 A They are currently in a nursing home now, so they are
19 getting 24-hour care. It's just she is really low right
20 now, and I'm the first contact. I do have sisters that
21 could step in.

22 Q Okay. And when did you start your term at Spartanburg
23 Tech?

24 A September, the last week in September.

25 Q And that's run through?

1 A December.

2 THE COURT: Let me see the lawyers, please.

3 (Bench conference held off the record.)

4 THE COURT: Mr. Clayton, after conferring with the
5 attorneys, rather than requiring you to do any more here,
6 given the fact that you are enrolled in Tech and that you
7 also have this situation with your relatives, I think we
8 could probably work around the situation with your relatives
9 easier than we could a situation with your class at Tech.

10 THE JUROR: Right.

11 THE COURT: And I certainly wouldn't want to do
12 anything that would interfere with your progress in that
13 course, because one reason that I became a lawyer and now a
14 judge is because I couldn't do math anyway. And I wouldn't
15 want to interfere with anyone that has a math course at any
16 time.

17 So, I'm going to go ahead and excuse you from further
18 participation here with our thanks for having been here
19 Monday, as well as today.

20 You may go about your regular activities. Thank you,
21 ma'am.

22 THE JUROR: Thank you.

23 (Whereupon, the juror was excused from the courtroom.)

24 THE COURT: Now, according to my calculations, that
25 puts us at 39, really with 38 more likely potentials.

Jury qualification -- Number 57

1 I think at 12:30 I have Mr. Browning and Ms. Caston
2 coming in -- Caston or whatever her name is. I am sorry.

3 And I want y'all available for when they are here.

4 And thereafter, after I make the determination on those
5 two individuals, we can do one of a couple of things.

6 I think that we will not need to examine the two
7 o'clock panel, of course, because we normally try to get 35,
8 and we are going to have at a minimum, I would say, 36. So
9 we should be in reasonably good shape there.

10 And then we would maybe, say, between 2:00 and 2:30
11 look at doing our strikes at that time and deal with any
12 Batson issues or related issues then.

13 And if we are in agreement then with the strikes at
14 that time, when the jury comes back, I would very simply ask
15 them if they had any changes in their conditions from what I
16 had discussed with them earlier and if there had been any
17 violation of my cautionary instructions since they had left
18 the courthouse. And, if not, then we would simply seat the
19 jury in accordance with the strikes that had been made.

20 I am going to get the clerk -- I think my clerk has
21 already typed up a list of the jurors. I'm going to get her
22 to print that off.

23 What I have done is I prepared a form over time that
24 lists the juror number, juror name, sex, race, age,
25 education and occupation.

1 And then you could use whatever notes that you might
2 have in addition to that, and we would strike from that
3 list.

4 I have listed them in the order in which they were
5 qualified, and we will strike straight down that list, the
6 state with five strikes and the defense with ten strikes, on
7 the regular 12, and then one and two on each alternate.

8 All right. Let's stand at ease then until we have
9 Mr. Browning and the other young lady here.

10 MR. GOWDY: Your Honor, one point of clarification.

11 THE COURT: Just one second, please.

12 MR. GOWDY: Can we approach?

13 THE COURT: Yeah. Come on up.

14 (Bench conference held off the record.)

15 THE COURT: Okay. We will stand at ease for just a few
16 minutes.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Let's bring in David L.
19 Browning.

20 JUROR NUMBER 40, DAVID L. BROWNING,
21 having been previously duly sworn, was voir dired as
22 follows:

23 EXAMINATION BY THE COURT

24 Q Have a seat right there, please, Mr. Browning.

25 Mr. Browning, you understand that you are still under

Jury qualification -- Number 40

1 oath here today.

2 A Yes, sir.

3 Q And you remember the other day that the -- there was an
4 issue as to whether or not you had any type of a prior
5 conviction or record.

6 A Yes, sir.

7 Q And you very adamantly and unequivocally stated that
8 you had never been convicted of a crime.

9 A Yes, sir.

10 Q And you are David Lawrence Browning.

11 A Yes, sir.

12 Q Did you ever live at 300 Regency Apartments --

13 A Yes, sir.

14 Q -- in Spartanburg? When was that?

15 A I would say '82 or '83.

16 Q Could have been. And did you ever have any type of a
17 false unemployment claim against you?

18 A Not that I remember.

19 THE COURT: All right. Mr. Deputy, if you would,
20 please come over here.

21 Q I am going to give you a photograph that I have
22 received, as well as an arrest warrant that I have.

23 THE COURT: How about handing that to him?

24 A That's me.

25 Q Can you tell me who that is in that photograph?

1 A Oh, that's me.

2 Q Does that refresh your memory any?

3 A That picture does, but I don't know anything about
4 that, but I had -- when I went to college, they paid me some
5 money if that's what it was about. I don't know. I don't
6 even remember if I was working then. I was working at
7 Mayfair Mill at the time.

8 Q Well, I think what we were attempting to get at --
9 because here is a bond form, and could you tell me if that
10 is your signature on that, on the back of it? On the back
11 of it, let him look at it. Is that your signature,
12 Mr. Browning?

13 A Yes, sir.

14 Q That was where bond was set. And you signed for your
15 bond in that case. Does that refresh your memory any?

16 A That is my signature. I don't remember. But it had to
17 be true.

18 Q And it's my understanding that the disposition by the
19 Court was that you did not appear for your trial and that
20 you were found guilty and received a 30-day sentence, and
21 that it was suspended upon restitution being paid. Did you
22 ever pay any restitution to the unemployment office?

23 A I don't remember it's been so long ago.

24 Q So, what you are telling me is that you have no memory
25 of any of this.

Jury qualification -- Number 40

1 A Yeah, I got memory of it, but that's been a long time
2 ago. And that's my signature and that's my picture. But
3 the unemployment claim, I have no recollection of. I was in
4 an accident.

5 Q When was that?

6 A That was basically about the same time. I was living
7 on Bryant Road at the time, and I got sued for having an
8 uninsured vehicle. I was in the process of moving. And I
9 do remember that; but unemployment claim, I have no
10 recollections of. It could have been. And if it was, it
11 must not have been a whole lot of money, because I would
12 have remembered a whole lot of money.

13 Q I don't think that the issue of the amount of money is
14 what concerns me as much as it is the fact that the question
15 that you responded to on your juror information form was
16 have you or any family member ever been arrested or charged
17 with a crime other than a traffic offense.

18 A Well, the traffic one is the only one I do remember,
19 and that's my honest truth.

20 Q And you answered no to that. And then there was have
21 you or any family member ever been convicted of a crime
22 other than a traffic offense, and the answer to that was no.

23 And, in essence, you had been arrested for this,
24 because you had been booked. That's your photograph there.
25 And you have also been convicted of this filing of a false

1 unemployment claim.

2 A Honestly, I don't remember that. I remember -- I know
3 that's my picture.

4 Q And I think that's what we were trying to find out
5 about the other day. I understand the position that, that
6 you have taken, but you do not disagree that that is your
7 photograph.

8 A No, no, sir.

9 Q And you don't disagree that that is your signature on
10 that bond form for that charge.

11 A No. That's my signature.

12 THE COURT: Anything from the defense?

13 MR. KELLY: No, Your Honor.

14 THE COURT: From the state?

15 MR. GOWDY: No, sir, Your Honor.

16 THE COURT: Well, Mr. Browning, I am going to excuse
17 you from further participation in this case. It's troubling
18 to me when someone comes into court, they're placed under
19 oath, they're asked about situations.

20 I understand that you can forget about certain things
21 that might happen in your life, but the fact that if you
22 have been arrested and booked and had a bond set, that makes
23 an impression on people, regardless of what it is.

24 And you were questioned extensively about it the other
25 day when you were questioned. I took your response at face

Jury qualification -- Number 40

1 value, and the state did also, and I qualified you as a
2 potential juror in this case.

3 But given the fact that while you were under oath, in
4 essence, you have lied to this Court, that's a very serious
5 matter insofar as I am concerned.

6 What I am going to do is defer any further action on
7 this until after this trial is over. I'm going to have a
8 couple of matters to deal with in this regard.

9 I will be back in touch with you, and you will be back
10 in court.

11 And I would suggest that you maybe want to talk to a
12 lawyer between now and then, because I'm going to be holding
13 a contempt hearing at the end of this trial to determine
14 what I'm going to do with you. Thank you, sir.

15 (Whereupon, the juror was excused from the courtroom.)

16 THE COURT: Let's bring Jennifer Caston in. I think
17 she had a problem she needed to bring to my attention.

18 (The following takes place at the bench with Juror
19 Number 53, Jennifer M. Caston.)

20 THE COURT: Come on up, Ms. Caston. The lawyers may
21 approach.

22 JUROR NUMBER 53, JENNIFER M.
23 CASTON, having been previously duly sworn, was voir dired as
24 follows:

25 EXAMINATION BY THE COURT

Jury qualification -- Number 53

1 Q How are you today?

2 A Fine.

3 Q I understand you called the clerk's office and you had
4 some type of problem. Could you tell me what it is?

5 A I had classes the next two weeks, and one of them was
6 at night the next ten weeks.

7 Q What type of class is it?

8 A An Excell class and --

9 Q How about repeating that for the court reporter?

10 A I have Excell classes at Spartanburg Tech on Thursday
11 nights, and all day Saturday classes at Converse, power
12 point and Word classes.

13 Q Is this part of your, the --

14 A Paralegal program, no. This is what I started doing
15 afterwards. I have paperwork from both of my classes.

16 Q You didn't tell me about this on this other day.

17 A I know. Well, for one thing, on the form it just says
18 if you are a full-time student. I am just part time. I
19 didn't put it on there.

20 And also I didn't know when I came to jury duty. I
21 didn't think it was going to affect my night or weekend
22 classes. I really didn't. When I called her she said you
23 should have told them and I told her my classes are
24 nonrefundable, and I will not get credit for my classes I
25 already started taking if I don't go.

Jury qualification -- Number 53

1 Q The Word and Excell on Saturday, what hours does that
2 run?

3 A The one this Saturday is 8:30, 8:00 to 12:30. And the
4 next Saturday till 4:30. And I have a class tonight 6:00 to
5 9:00.

6 Q The only one that causes me some concern is the one
7 Saturday, because if you were selected to serve on this case
8 there is a very high probability that we would work on
9 Saturday. I don't know about the next Saturday. There is a
10 probability that we might be here, might be. I have no way
11 of knowing.

12 A These are classes, I can't get my money back on them,
13 because you have to cancel them before. You can't cancel
14 them at last minute. They have to have so many people.

15 Q I understand that. Is this something through work?

16 A That's something I am doing on my own.

17 Q How much did you pay for the classes?

18 A The one, the Excell class, is \$135 and the Saturday
19 classes are a hundred dollars.

20 Q And is that something though that is taught all along?

21 A No. The ones at Converse are not going to be offered
22 again until next spring. And the reason, I am trying to
23 change jobs, and that's why I am taking them, because I need
24 these classes. So I am taking them now.

25 Q You are not trying to be a paralegal?

Jury qualification -- Number 53

1 A I am trying to find a paralegal class, job. That's the
2 reason I am taking these classes.

3 Q How about going back there.

4 (Whereupon, the juror was excused from the courtroom.)

5 THE COURT: I think I can probably get her to class
6 tonight, let an agent go with her tonight. Saturday is the
7 only thing that presents a problem to me.

8 MR. KELLY: I could not hear the hours.

9 THE COURT: Saturdays from 8:30 until around 12:30.

10 (Bench conference held off the record.)

11 THE COURT: Let's bring her back in, Mr. Mack.

12 (The following takes place in the presence of the
13 juror.)

14 THE COURT: What I am going to do, I have no way of
15 knowing whether you will be on this jury or not. I have no
16 way of knowing until we strike later this afternoon.

17 In the event that you are selected, I will see that you
18 are in that class tonight. You may have a jury custodian
19 sitting with you. They will take you there and bring you
20 back.

21 So as far as Saturday is concerned, there wouldn't be a
22 Saturday. I will contact Converse though and explain the
23 situation and see if we can't get you a refund.

24 You are right. You are not a full-time student, and we
25 have a certain number of jurors that were qualified, and we

Jury qualification -- Number 53

1 have to have for this case.

2 I am going to get you to the Excell class tonight if
3 you are selected. If you are not selected, you will go
4 about your business.

5 And Saturday, you are more than likely going to be in
6 court.

7 THE JUROR: So I need to be back here at 3:30 with my
8 clothes.

9 THE COURT: Leave them in your car.

10 THE JUROR: Thank you.

11 THE COURT: Yes, ma'am. All right.

12 (End of proceedings at the bench.)

13 THE COURT: All right. So, we are down now to 37
14 and --

15 MR. GOWDY: Maybe 38, Your Honor. I had 39; and with
16 Mr. Browning, it's 38. But I --

17 THE COURT: How many did you have?

18 MR. MORIN: I think it's --

19 THE COURT: You have 39? Okay. Thirty-nine. Maybe I
20 didn't add the last one. I didn't add the last one. I'm
21 sorry. So, that puts us down to 38.

22 Okay. Let me see that. Wait just one second.

23 (Pause.)

24 THE COURT: What I am going to do is go ahead and give
25 you the list that we have so that you can look at that.

1 I am going to let me clerk rearrange the list before
2 our final strike, but say about 2:15 we'll come back in
3 here, 2:25 to 2:30, and strike.

4 And we will have Mr. Browning removed by then. The
5 rest of them will be in order and the same.

6 MR. GOWDY: Thank you, Your Honor.

7 THE COURT: Okay. Let's be back here at 2:15, and we
8 will proceed at that time. Thank y'all very much. Have a
9 nice lunch break.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Let the record reflect that I
12 know that Mr. Kelly and Mr. Morin made a motion yesterday in
13 regards to questioning or taking exception to Mr. Mosley,
14 Juror Number 192.

15 I think there was some issues that they wanted to
16 question him about -- race -- from information that was
17 revealed on his juror questionnaire.

18 Rather than us dry striking at this time, when he gets
19 here, I will let you question him. If there are any others
20 that you want to question that have been qualified in that
21 regard, I will let you question them too.

22 MR. GOWDY: Thank you, Judge.

23 THE COURT: All right. We will stand at ease until
24 around 3:30.

25 (Whereupon, a recess was taken.)

1 THE COURT: All right. Jason B. Lyda, please.

2 If you would, bring him in. Mr. Bailiff, bring in
3 Jason B. Lyda.

4 JUROR NUMBER 166, JASON B. LYDA,
5 having been previously duly sworn, was voir dired as
6 follows:

7 EXAMINATION BY THE COURT

8 Q Please resume your seat there, Mr. Lyda.

9 Good afternoon, Mr. Lyda. Do you understand that you
10 are still under oath today?

11 A Yes, sir.

12 Q And since you left the courthouse have any of my
13 cautionary instructions been violated? Have you spoken with
14 anyone about this case? Has anyone attempted to contact
15 you; or have you read, seen or heard anything about this
16 case?

17 A No, sir.

18 Q I have just several questions that I want to follow up
19 with you, Mr. Lyda. First of all, in your employment do you
20 work with or employee anyone who is of the African-American
21 or black race?

22 A No, sir.

23 Q Do you belong to any organizations, clubs or volunteer
24 organizations or a church where you have black people who
25 also participate on a social basis?

Jury qualification -- Number 197

1 A No, sir.

2 Q And have you ever had an unpleasant experience with a
3 person of another race?

4 A No, sir.

5 THE COURT: All right. Would the defense have any
6 questions?

7 MR. MORIN: No, sir.

8 THE COURT: State?

9 MR. GOWDY: No, sir, Your Honor.

10 THE COURT: Thank you very much.

11 As I send you back to the jury assembly room, please do
12 not discuss this case or any issue presented herein with any
13 other member of the jury venire. Thank you, sir.

14 You can put him in the East Courtroom. That will be
15 good.

16 Gary L. New.

17 (Whereupon, the juror was excused from the courtroom.)

18 JUROR NUMBER 197, GARY L. NEW,
19 having been previously duly sworn, was voir dired as
20 follows:

21 EXAMINATION BY THE COURT

22 Q Good afternoon, Mr. New. How are you doing today?

23 A Doing very good.

24 Q Do you understand that you are still under oath today?

25 A Yes, sir.

Jury qualification -- Number 197

1 Q And you also recall the cautionary instructions that I
2 have given you on several occasions.

3 Have there been any violations of those instructions
4 that you were not to talk to anyone? Has anyone attempted
5 to contact you; or have you read, seen or heard anything
6 about this case?

7 A No, sir.

8 Q I just have a couple of more questions that I wanted to
9 follow up with you on, Mr. New.

10 First of all, in your employment do you work with or
11 employee anyone who is African-American?

12 A No, sir.

13 Q Do you belong to any organization, clubs or volunteer
14 organizations, a church where you have people of
15 African-American decent who also participate on a social
16 basis?

17 A I am not a member of clubs, but I have African-American
18 friends.

19 Q Okay. Could you tell me a little bit about that?

20 A When we go out and stuff like that.

21 Q And that's on a social basis?

22 A Yes, sir.

23 Q Have you ever had any unpleasant experience with a
24 person of another race?

25 A No, sir.

Jury qualification -- Number 192

1 THE COURT: Anything further from the defendant?

2 MR. KELLY: Nothing, Your Honor.

3 THE COURT: From the state?

4 MR. GOWDY: No, sir, Your Honor.

5 THE COURT: Mr. New, once again, I'm going to continue
6 my instructions to you that you are not to discuss this case
7 with anyone that you come in contact with, whether it be
8 fellow jurors, anyone else.

9 So, I am going to send you to the East Courtroom with
10 the cautionary instructions still applying to you. Okay,
11 sir.

12 THE JUROR: Yes, sir.

13 (Whereupon, the juror was excused from the courtroom.)

14 THE COURT: David M. Mosley.

15 JUROR NUMBER 192, DAVID M. MOSLEY,
16 having been previously duly sworn, was voir dired as
17 follows:

18 EXAMINATION BY THE COURT

19 Q Good afternoon, Mr. Mosley. Mr. Mosley, do you
20 understand that you are still under oath, sir?

21 A Yes, sir.

22 Q And you also remember the instructions that I gave you
23 that you were not to discussion this case with anyone, that
24 if anyone attempted to contact you, that you were to let me
25 know that, and also that you were not to read, watch or

1 listen to any news case concerning this case. Have there
2 been any violations of those instructions?

3 A No, sir.

4 Q Mr. Mosley, I have just a few questions that I want to
5 follow up with you on.

6 Do you work with or employee anyone who is a member of
7 the African-American race?

8 A I work around some on some of the jobs.

9 Q All right, sir. Could you tell me a little bit about
10 that?

11 A Usually brick masons and some roofers and electricians
12 and plumbers.

13 Q And that would be in the construction work that you do
14 as a -- I think you told us you were a dry wall contractor.

15 A Yes, sir.

16 Q And so you do work on jobs with them.

17 A Yes, sir.

18 Q Do you employee any African-Americans in your business?

19 A Not at this time.

20 Q Have you?

21 A I have.

22 Q All right, sir. Do you belong to any organizations,
23 clubs, volunteer organizations, a church where you would
24 have members of the African-American race who also
25 participate on a social basis?

Jury qualification -- Number 295

1 A No, sir.

2 Q And have you ever had an unpleasant experience with a
3 person of another race?

4 A No, sir.

5 Q Anything from the defendant?

6 MR. MORIN: No, sir.

7 THE COURT: From the state?

8 MR. GOWDY: No, sir, Your Honor.

9 THE COURT: Thank you very much.

10 I am going to ask that you continue my cautionary
11 instructions. You're not to discuss this case with your
12 fellow jurors or anyone else.

13 I am going to send you to the East Courtroom. We will
14 see you in a few minutes.

15 (Whereupon, the juror was excused from the courtroom.)

16 THE COURT: Michael J. Willingham.

17 JUROR NUMBER 295, MICHAEL J.

18 WILLINGHAM, having been previously duly sworn, was voir
19 dired as follows:

20 EXAMINATION BY THE COURT

21 Q You may be seated. You are Michael J. Willingham,
22 correct?

23 A Yes, sir.

24 Q And, Mr. Willingham, do you understand that you are
25 still under oath here today?

1 A Yes, sir.

2 Q And you also recall the cautionary instructions that I
3 have given you on several occasions that you are not to
4 discuss this case with anyone, that if anyone attempted to
5 contact you that you were to notify me of that, and also
6 that you were to refrain from reading, watching or listening
7 to any news accounts concerning this case. Have there been
8 any violations of my instructions?

9 A No, sir.

10 Q Mr. Willingham, I have just a couple of more questions
11 that I want to pose to you. Do you work with or employee
12 anyone who is of the African-American race?

13 A Do I work with?

14 Q With, or employee anyone who is an African-American?

15 A I work with.

16 Q All right, sir. One person, more than one or --

17 A A bunch.

18 Q All right. Could you tell me a little bit more about
19 that, how you work with them?

20 A I run a vending route, and we have got truck drivers,
21 other vendors, and I am in a lot of plants with them.

22 Q And do you belong to any organizations, clubs,
23 volunteer organizations, a church where you have members of
24 the -- who are African-American who also participate on a
25 social basis?

Jury qualification -- Number 132

1 A No, sir.

2 Q And have you ever had an unpleasant experience with a
3 person of another race?

4 A No, sir.

5 THE COURT: Anything from the defendant?

6 MR. MORIN: No, sir.

7 THE COURT: From the state?

8 MR. GOWDY: No, sir, Your Honor.

9 THE COURT: Thank you, sir.

10 I'm going to once again, Mr. Willingham, instruct you
11 that you are not to discuss this matter with your fellow
12 jurors or anyone else that you come in contact with.

13 All of the cautionary instructions continue from this
14 point in time. Okay. Thank you, sir.

15 If you would, follow the bailiff to the East Courtroom,
16 please.

17 (Whereupon, the juror was excused from the courtroom.)

18 THE COURT: Edward T. Huffman.

19 JUROR NUMBER 132, EDWARD T.

20 HUFFMAN, having been previously duly sworn, was voir dired
21 as follows:

22 EXAMINATION BY THE COURT

23 Q Good afternoon, Mr. Huffman. You are Edward T.
24 Huffman, correct?

25 A Yes, sir.

1 Q And you recall that you are still under oath.

2 A Yes, sir.

3 Q And, Mr. Huffman, I gave you some instructions
4 yesterday that you were not to discuss this case with
5 anyone, that if anyone attempted to contact you that you
6 were to report that to me, and also that you were to refrain
7 from reading, watching or listening to any news accounts
8 concerning this case. Have there been any violations of my
9 instructions?

10 A None, Your Honor.

11 Q I have just a couple of more questions I want to go
12 over with you. Mr. Huffman, do you work with or employee
13 anyone who is African-American?

14 A No, I don't.

15 Q And do you belong to any organizations, clubs,
16 volunteer organizations or a church where you have
17 African-Americans who also participate on a social basis?

18 A Well, my church, you know, they come there, you know.

19 Q And what church do you go to?

20 A Inman First Freewill Baptist Church.

21 Q All right, sir. And, so, members that are
22 African-Americans attend there also.

23 A I have seen them there.

24 Q Okay.

25 A I don't know if they are members or not, but I have

1 seen them there.

2 Q Have you ever had an unpleasant experience with a
3 person of another race?

4 A No, sir, I sure haven't.

5 THE COURT: Anything from the defendant?

6 MR. MORIN: No, sir.

7 THE COURT: From the state?

8 MR. GOWDY: No, sir, Your Honor.

9 THE COURT: Mr. Huffman, I would continue my
10 instructions to you that you are not to discuss this case
11 with your fellow jurors or anyone else. And all of my
12 cautionary instructions continue at this time.

13 All right, sir. Thank you, sir. Just follow the
14 bailiffs.

15 (Whereupon, the juror was excused from the courtroom.)

16 THE COURT: All right. Anything further from the state
17 or the defense before we strike this jury?

18 MR. GOWDY: Not from the state, Your Honor.

19 MR. MORIN: No, sir.

20 THE COURT: All right. Are you gentlemen ready to
21 strike?

22 MR. MORIN: Yes, sir.

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

24 THE COURT: All right. Five and ten on the strikes,
25 please. And we are just going to go down the list.

1 Madam clerk, if you would, call the first name.

2 (Whereupon, a jury was struck outside the presence of
3 the jurors. Forms attached to transcript.)

4 THE COURT: All right. For the record, let the record
5 reflect that the following jurors have been selected:

6 Pamela W. Robinson, Jeffrey A. Blanchard; Susan C. Hardison;
7 Doris M. Robertson; Karen E. Nave; Jennifer M. Caston;
8 Walter M. Ballard, Jr.; Larry W. Ridings; Michael S. Garner;
9 Debra M. Ledford; Benjamin L. Martinez; Sandra S. Taylor.

10 That's the original 12. Anyone have any disagreement with
11 that?

12 MR. GOWDY: No, sir. Your Honor.

13 MR. MORIN: No, sir.

14 THE COURT: And then the alternates will be Stacy M.
15 Gantt and Deborah J. Lindsay. Correct?

16 MR. GOWDY: Yes, sir, Your Honor.

17 MR. MORIN: Yes, sir, Your Honor.

18 THE COURT: And, gentlemen, the -- are there any
19 matters that need to be taken up prior to me bringing the
20 jurors around and impanelling them from the state?

21 MR. GOWDY: Not on behalf of the state, Your Honor.

22 MR. MORIN: Yes, sir.

23 THE COURT: All right, sir.

24 MR. MORIN: The state struck the only two
25 African-Americans who qualified on the panel. We would make

1 a motion under Batson at this time.

2 THE COURT: All right. Solicitor.

3 MR. GOWDY: Your Honor, if it please the Court, I would
4 just initially want to say for the record that the fact that
5 two African-Americans were struck, I don't believe, makes
6 out a prima facie case.

7 I would like to go on and give the race neutral
8 reasons.

9 THE COURT: Yes, sir.

10 MR. GOWDY: On Ms. Morrow, Your Honor, as the Court I
11 am sure will remember, she was one of the first jurors.
12 Deputy Willingham questioned her at some length about her
13 criminal record.

14 There was some withholding on her behalf, and but for
15 the fact that I think I dropped the ball in terms of
16 understanding how the Court qualified jurors early on, on
17 Tuesday morning, we would, of course, move to have her
18 disqualified, because her answers were, frankly, closer, I
19 thought, to Mr. Rockard's who was disqualified than they
20 were any of the other people who had an innocent
21 misrecollection.

22 She also said, Your Honor, that she thought guns were
23 used improperly. Now, there were other jurors who expressed
24 some reluctance about guns, but nobody used the word guns
25 are used in properly. That's obviously going to be an issue

1 in this case, if the victim was armed.

2 And, in addition, Your Honor, she wanted to switch to
3 another term. She is a school teacher, as I recall, and,
4 obviously, we only want jurors who want to be here. And
5 only when she was confronted with the fact that she would
6 miss her vacation did she opt to stay.

7 But the primary reason, Your Honor, is the withholding
8 of the convictions, and only when confronted with the fact
9 that she had an alias did we begin to get any truthful
10 responses.

11 THE COURT: All right. Let's go on to the other.

12 MR. GOWDY: Your Honor, Mr. Alexander, the same
13 rationale for him would exist for him, for Mr. Huffman. Of
14 course he was a white juror that we struck. Mr. Alexander
15 has a son who was prosecuted by the Seventh Circuit
16 Solicitor's Office for murder.

17 Mr. Huffman, although it wasn't his son, had a close
18 family member that was also prosecuted for murder. This is
19 a murder case.

20 And Mr. Moore is also somebody's son. And we did not
21 want a juror who had recently had a son sent to prison,
22 although I cannot tell you for how long, for the charge of
23 murder. That is the primary reason that we struck him,
24 because he is the only juror from my recollection that
25 actually has a child that is in prison for murder.

1 I also had a notation from Monday, Your Honor, that he
2 misunderstood one of the Court's questions, and he was the
3 only juror that I had a notation that misunderstood that
4 question.

5 But the primary reason is the fact that he has a son
6 that has been convicted of murder by the Seventh Circuit
7 Solicitor's Office.

8 THE COURT: I will be glad to hear from you in regards
9 to the opposition to the strike showing that it's mere
10 pretext.

11 MR. KELLY: Could we have just one second, Your Honor?

12 THE COURT: All right.

13 (Pause.)

14 MR. MORIN: Your Honor, we can't argue with the state.

15 THE COURT: All right. Given the fact that the state
16 has presented the reasons that they have, and that in
17 accordance with our case law of the State vs. Adams, 322
18 South Carolina 114, 470 S. E. 2d., 366, a 1996 case, wherein
19 a motion is made to hold a Batson hearing where members of a
20 cognizable racial group or gender is struck and the opposing
21 party requests a hearing, that was done by the defendant.

22 The second step of the analysis requires only a race
23 neutral explanation by the proponent of the strike.

24 Mr. Morin and Mr. Kelly, it's my understanding that you
25 have accepted those reasons. I do find, by the way, that

Jury qualification -- Number 132

1 they are race neutral reasons, and, as such, there is --
2 these strikes were not just pretext. And, as such, the
3 motion is denied.

4 All right. Insofar as the manner in which we are going
5 to do this, I am going to go ahead and bring the jury panel
6 around here, and we will then call the names of the ones
7 that have been seated. They will take their place in the
8 jury box, and then we will deal with the rest of them.

9 All right. Let's bring them around.

10 (Whereupon, all qualified jurors were returned to the
11 courtroom.)

12 THE COURT: All members present, Mr. Bailiff?

13 THE BAILIFF: Yes, sir, they are.

14 THE COURT: Good afternoon, ladies and gentlemen of the
15 jury. It's good to see you again this afternoon.

16 Before we actually seat the jury in this case, has
17 there been any change in any juror's circumstance?

18 Yes, ma'am. Come forward, please. Lawyers may
19 approach.

20 (Bench conference held off the record with juror.
21 Statement presented to the Court.)

22 THE COURT: Okay. Resume your seat. Thank you, ma'am.

23 All right. Madam clerk, please call the jurors names
24 that will be seated.

25 (Whereupon, a jury was impanelled.)

Jury sworn

1 THE COURT: All right. Anything further from the state
2 before the jury is sworn?

3 MR. GOWDY: No, sir, Your Honor.

4 THE COURT: From the defendant?

5 MR. MORIN: No, sir.

6 THE COURT: All right. Madam clerk, let's swear this
7 jury. Well, just one moment, please.

8 Ms. Nave, I'm going to ask that you take the first
9 chair here and swap seats with this lady and serve as the
10 foreperson of our jury, please, ma'am.

11 And, madam foreperson, if you and Ms. Gant and
12 Ms. Lindsay would continue to occupy the chairs that you
13 presently sit in throughout the course of this trial, the
14 remainder of the jury may sit in any other seat that's
15 available other than the foreperson and the alternate
16 chairs.

17 So, please understand that, that the foreperson will
18 sit in that chair throughout the course of the trial, and
19 the alternates will sit in their chairs throughout the
20 course of the trial.

21 You may swear the jury.

22 (Whereupon, the jury was duly sworn.)

23 THE COURT: And, if we could, have the jury custodians
24 come in, please.

25 (Whereupon, the jury custodians were presented before

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1 the Court.)

2 THE COURT: I tell you what. Y'all have a seat for a
3 moment then.

4 Ladies and gentlemen of the jury, before I swear the
5 jury custodians and give you further instructions, I'm going
6 to send you to the jury room for just a few minutes.

7 As I send you to the jury room, please understand that
8 my instructions that I have given you any number of times
9 during this week will continue.

10 You are not to discuss this case among yourselves in
11 any manner or fashion whatsoever. You can talk about a lot
12 of things while you are together, but not this case.

13 Also, if anyone attempts to contact you, you are to
14 report that immediately to your jury custodians whom I will
15 introduce to you in a few moments; and, also, you are to
16 refrain from reading, watching or listening to any news
17 accounts concerning this particular case.

18 All of those things will be monitored and explained to
19 you in further detail, but as I send you to the jury room,
20 let me remind you that you are not to discuss this case
21 among yourselves. We will get you back in the courtroom in
22 a few minutes.

23 The jury may retire. Everyone else remain seated,
24 please.

25 (The following takes place outside the presence of the

Colloquy

1 jury.)

2 (Whereupon, the remaining members of the jury venire
3 were excused.)

4 THE COURT: Now, if we can get all of our jury
5 custodians here, we will be able to do some good.

6 And, gentlemen, for your information, I received a
7 disability certificate for Ms. Morrow. "The above patient
8 is being treated in our office for injuries sustained in a
9 fall, and she would need to return to care on 10/19/01, so I
10 will let the court reporter mark that.

11 (Statement from Juror Number 191 marked Court's Exhibit
12 Number Seven; requested juror questions marked Court's
13 Exhibit Number Eight.)

14 THE COURT: Just to try to plan some of the time that
15 we are going to have, what I am going to do this afternoon
16 if we have some issues that we can deal with, and I think
17 maybe we have one or two, we will go ahead and get those out
18 of the way.

19 I'll have the jury custodians as soon as they are
20 sworn, and I explain the process that we are going to engage
21 insofar as the jury is concerned, what time we are going to
22 start tomorrow and the kind of days that we are going to
23 work, we will let them be removed from the courthouse and
24 take them to their location that they are going to be
25 sequestered in and get them settled down and kinda squared

Colloquy

1 away for the evening. And then we will be here for a little
2 while to take care of the preliminary matters that we can.

3 And then we will start in the morning around 9:00 a.m.,
4 and we will work until around 12:30 or 1:00, whatever's a
5 good quitting time.

6 I'm going to have lunch brought in each day for the
7 jury so that we won't be wasting time going out and coming
8 back and all of the things that go along with that.

9 And then we'll take anywhere from an hour to an hour
10 and 15 minutes for lunch so that everyone can accommodate
11 their needs, and then come back and work until around, I
12 don't know, 5:30 or 6:30 or whatever, whatever it takes, and
13 then break for the day.

14 Please understand that since we do have the jury
15 sequestered that we are going to be working on Saturday just
16 as a regular day, and I will let the jury decide what they
17 want to do about Sunday with the understanding that we can
18 start at whatever time they want to. I've started at nine
19 o'clock; I've started at eleven o'clock; ten o'clock; at one
20 o'clock. You name it.

21 I think in all of the cases that I've tried I've
22 started about every time that you can on a Sunday. I even
23 started one Sunday about four o'clock, I think, because of
24 the way the time fell. But please understand that I am
25 going to work at their pace insofar as the days are

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1 concerned. I am not going to stretch them out, because I
2 don't want to wear the lawyers out in the case.

3 But if y'all would kind of keep me apprised of how we
4 are doing with our case and witnesses that maybe are coming
5 from out of town that you want to try to get out of town or
6 you want to use the next day or ever how you want to work
7 it, if we need to work a little bit longer, we will do that.
8 If we need to quit a little bit early, we will do that. I
9 understand the problems that you-all face, and I will be
10 willing to work with you on that.

11 Quite frankly, I really don't have a real feeling about
12 how long this case is going to take.

13 Does the state have any idea how long it would take to
14 put up the case in the guilt phase?

15 MR. GOWDY: Your Honor, I'm notoriously bad at
16 estimating, but it is inside three days. I feel safe in
17 saying that, unless one of my deputies disagrees. It's
18 inside of three days.

19 THE COURT: Okay. All right. Let's bring the jury
20 back, Cotton.

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

23 THE COURT: All right. If we could get the jury
24 custodians around, please, so that you can be sworn.

25 If you would, please, stand here. Raise your right

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1 hand.

2 Madam clerk, would you administer the oath to them?

3 (Whereupon, the jury custodians were sworn.)

4 THE COURT: Ladies and gentlemen, I'm not going to --
5 if you-all could step just aside a little bit -- I'm not
6 going to introduce the jury custodians to you individually.
7 I will, suffice it to say, that these are all members of the
8 state law enforcement division, SLED, who have been assigned
9 to this detail who will be taking care of you for the
10 duration of this trial. You will get to know them very well
11 over the next few days. So, please understand that there is
12 a very good reason why they are here taking care of you.

13 We have impanelled a jury that we want to hear this
14 case that would be uninfluenced by any outside sources, and,
15 as a result of that, your activities will be restricted by
16 the jury custodians.

17 If there are any problems that come up, they will
18 certainly bring it to my attention. And please feel free to
19 communicate with them. You can talk with them about any
20 number of things except this case. You cannot discuss this
21 case among yourselves, with the jury custodians or anyone
22 else that you come in contact with.

23 Please understand that they have a very difficult job,
24 so please cooperate with them. Do what they ask of you.

25 Once again, your movement and so forth will be

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1 restricted, but we're also going to try to build in some
2 things that will allow you, you know, some recreation and
3 some relaxation.

4 Please understand that when they take you out to dinner
5 for your meals that they will have a way that they do that.
6 Please cooperate with them. Please understand that they are
7 operating under my guidelines.

8 Also, if you have reading materials, those types of
9 things, they may want to look at what you are reading. If
10 it's something that they need to bring to my attention, they
11 will do so. Please understand what whatever you are
12 reading, keep that to yourself. Do not share any type of
13 readings or anything else that you might have for your own
14 personal consumption and, once again, please share those
15 things with the jury custodians.

16 If you have a cellular telephone, you're going to have
17 to give that to the jury custodian. And please understand
18 that we will find out if you do have one. So, please don't
19 try to hide one on us. I want you to give it to them. And
20 they will see that it's properly returned to you at the
21 appropriate time.

22 Also, if you have a beeper or anything like that,
23 you're really not going to need that while you are with us.
24 So, please understand that, and turn that over to the jury
25 custodians also.

Colloquy

1 Now, we have one young lady who has a class tonight.
2 Someone is going to class out of this group of SLED agents.
3 So, I hope that you'll learn a lot. Please understand that
4 we're accommodating her for this class tonight. And then we
5 will work on with the rest of it during this week ahead.

6 If any problems do come up, once again, please bring it
7 to the attention of your jury custodians, and they will
8 bring it to my attention and can get in touch with me at a
9 moment's notice.

10 Also, I want you to understand that since you are
11 sequestered, I am very cognizant of that fact. Normally,
12 when I try these cases, I'm far away from home, and I am
13 almost sequestered myself. It's a little unusual since I
14 live here in Spartanburg now that I'm at home trying a case
15 like this. So, please understand that we're going to try to
16 move this case along as quickly as possible.

17 We are going to see that you are taken in just a few
18 minutes to your location that you're going to be staying,
19 and get settled in for this afternoon and get you something
20 to eat tonight. And then get you a good night's sleep, and
21 then we were going to come back in the morning at 9:00 a.m.
22 and start this case. And we're going to work tomorrow. We
23 will work all day on Saturday.

24 Insofar as Sunday is concerned, Madam Foreperson,
25 ladies and gentlemen, I want you to be able to tell me

Colloquy

1 tomorrow what hours you would like to work on Sunday. We
2 will work whatever hours you desire. We can start at nine
3 o'clock on Sunday morning; we can start at 10:00, 11:00,
4 12:00, 1:00.

5 If you don't want to work on Sunday, we won't do that.
6 But you have to understand that you're not going to be going
7 to church or to things like that. You would be sequestered.

8 So, please understand that if you would give me a
9 decision tomorrow morning when you come back, if you would
10 just write it on a sheet of paper that we would like to
11 start at a certain time or we would not like to work at all
12 on Sunday, let me know that.

13 And then we will continue to work diligently throughout
14 the course of the time that you're here. What I intend to
15 do, as I say, is start at 9:00 a.m. Then we'll take our
16 lunch break somewhere around 12:30 or one o'clock, and we're
17 going to be bringing lunch into the courthouse so that we
18 won't have to waste time in transporting you somewhere and
19 then bringing you back. We'll have a variety of food.

20 And then we will continue back after about an hour or
21 an hour and 15 minutes so that everyone can have a lunch
22 break and properly take a break. And then we'll continue
23 until the late afternoon or early evening.

24 Normally, we try to quit, I would say, somewhere
25 between 5:30, 6:30. We may even work a little bit later

Colloquy

1 than that if necessary if it's to get a witness done that's
2 from out of town or something like that.

3 But please understand that I'm greatly appreciative of
4 the service that you are providing, and I'm also greatly
5 appreciative of the fact that you're going to be away from
6 your family and friends and loved ones. And we will try to
7 move this case along as expeditiously as possible.

8 But please understand that we are here about some very
9 serious business, and I'm sure you do.

10 So with all of that, please let me know in the morning
11 what your intentions are, Madam Foreperson. You can just
12 write me a note and sign your name as the foreperson, and
13 give it to the SLED agent, and he will see that it's
14 delivered to me. And then we will make our plans from
15 there.

16 I hope that you have a pleasant evening, that you will
17 get settled in and get a good night's rest. And we will be
18 back here tomorrow ready to go with a full day of work.

19 Please listen very carefully to your custodians,
20 because I know that you have your vehicles and your
21 belongings here, and we are going to have to make
22 arrangements to get all of that stuff taken care of.

23 But they will do a very good job of that. These are
24 some of the finest people that you will ever want to deal
25 with. I've worked with several of them on other cases, and

Colloquy

1 I know you're going to enjoy them. I enjoy their
2 friendship, and you will too.

3 All right. To the custodians, I will see you in the
4 morning at 9:00 a.m. Please make arrangements to get the
5 jury taken to their appropriate location and get them taken
6 care of tonight and in the morning.

7 You-all have a pleasant evening.

8 The jury is excused. Everyone else remain seated.
9 We'll see you back in the morning at 9:00 a.m.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: All right. Insofar as the issues that we
13 can deal with today, Mr. Morin, I think you had something
14 that you wanted to bring up to me, sir.

15 MR. MORIN: If I may have just a moment, Your Honor.

16 THE COURT: Yes, sir. Take your time.

17 (Pause.)

18 MR. MORIN: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 MR. MORIN: Up until last week when I received the
21 state's supplementary notices of additional evidence in
22 support of aggravating circumstances, this wasn't an issue.
23 But in their listing of some of their witnesses the issue
24 about Mr. Moore's alleged drug use in or around the time of
25 this incident, they indicated in here there were two

Motions

1 specific people who have given statements, but apparently
2 they have supplemented their statements at some point, which
3 I do not know, but apparently they have, because the
4 summaries that they have given me had in it information that
5 I hadn't previously received.

6 And my position on that is -- and even with what they
7 have added, I am going by the statement of Smith where the
8 Court said that drug use is incumbent to establish a motive
9 for the crime, a state of mind, unless they can support the
10 relationship between the crime and the drug use.

11 And up until last week there wasn't any connection that
12 I could find in the evidence. However, they now have
13 indicated there may be some. And if they are intending to
14 make that an issue in this trial, we would ask that they be
15 limited from doing that unless they're going to be able to
16 show that connection. And I would rather do that in a
17 pretrial hearing rather than kind of go through it during
18 the trial, and then if they don't -- if they can't make that
19 connection, I don't want the jury to hear about it and then
20 say, well, you haven't made that connection.

21 THE COURT: Well, you say that it's an aggravating
22 circumstance. Is that --

23 MR. MORIN: Well, that's where I got -- that's where I
24 got the information from. They sent me this notice. And in
25 that notice it said this witness will testify to these

Motions

1 things. And part of that was new to me. And I don't know
2 if they are intending to use that in the guilt phase or just
3 in the aggravation phase. I'm speaking just about the guilt
4 phase.

5 THE COURT: Okay.

6 MR. GOWDY: May it please the Court, what Mr. Morin is
7 referring to is that Deputy Barnette and Deputy Willingham
8 did provide what I think is an exhaustive list of
9 aggravating circumstances.

10 I know we had an open file. The case law says we
11 weren't required to do so, but out of an abundance of
12 caution, we did.

13 What Mr. Morin is referring to is there is a witness,
14 Your Honor, that the testimony will be, as I understand it,
15 that Mr. Moore went to a person's house around midnight,
16 three hours before the murder, and asked to buy cocaine on
17 credit. He was told no, that the cocaine typically is not
18 sold on credit.

19 Mr. Moore, according to this witness, had been at his
20 house previously. Then we have -- Mr. Moore had no money,
21 said he would be paid later on that night. And, in fact,
22 Your Honor, immediately after this shooting took place, went
23 directly back to that same house, the very same person, and
24 asked, said now I have money, I would like to get some
25 cocaine.

Motions

1 We think, Your Honor, under state -- in State vs.
2 Smith, Justice Toal wrote a very powerful descent, which I
3 would submit to Your Honor is now the law under State vs.
4 Williams, which is a 1996 case, of evidence of cocaine
5 purchasing, evidence of cocaine sales -- is admissible under
6 a number of different theories, not the least of which, Your
7 Honor, is the res gestae theory or context of the crime.

8 Mr. Moore went to this person's house right before he
9 went to the store. He went to this person's house right
10 after he went to the store for the same purpose, to purchase
11 cocaine.

12 He did not have money the first time, but he wanted
13 cocaine. He did have money the second time.

14 And, in addition, Your Honor, there is a witness. A
15 nurse will testify that Mr. Moore conceded to her when he
16 was at the hospital that he was under the influence of both
17 alcohol and cocaine, which to the extent -- to the extent
18 that any statements from Mr. Moore are admissible in this
19 case, obviously goes to his ability to perceive the
20 incidence. If he was under the influence of cocaine or
21 alcohol, there are primary theories under a res gestae, Your
22 Honor, and it's the context of the crime. The sequel two
23 events were such -- he went to a house to purchase cocaine,
24 he had no money. He said he would be paid later on that
25 night.

Motions

1 Sure enough, three hours later he came back, shot in
2 the arm, didn't want a trip to the hospital, wanted cocaine.

3 And we think under State vs. Williams, Your Honor,
4 again, I believe Justice Toal wrote that opinion, but she
5 wrote a powerful descent in State vs. Smith, which I would
6 submit to the Court is now -- is now the law in South
7 Carolina that cocaine sales and cocaine use, in fact, is
8 admissible under a number of different theories and would be
9 admissible under the res gestae theory in this case.

10 THE COURT: Anything else, Mr. Morin?

11 MR. MORIN: The only thing I would like to add, Your
12 Honor, is that this person who alleges that Mr. Moore came
13 to his house and left, that information is -- I understand
14 about the nurse, but the nurse's position, and as far as
15 that goes standing on its own, wouldn't be enough.

16 And this other person had apparently been recently, two
17 years, some two years after has come up with this. And what
18 my position is is that one person's new testimony, along
19 with this nurse who says it was in his system, doesn't
20 necessarily connect it to this crime, if it's a crime.

21 THE COURT: Well, of course, we have the case of the
22 State vs. Dickerson, which is 535 S. E. 2d., 119, 341 S. C.
23 391, which deals with the issue of the admissibility of
24 evidence of a defendant's drug use. And I think that, that
25 it goes into a long litany of cases including the case of

Motions

1 the State vs. Smith that says that the cases stand for the
2 general proposition that in order to be admissible the drug
3 use must have some relevant connection to the crime charged.

4 And, of course, this was a case that Chief Justice Toal
5 also wrote the opinion in, the Dickerson case, that was
6 filed or decided July the 3rd of last year.

7 And I think what I would like to do is I am inclined to
8 say that it is admissible, given the facts as I have heard
9 it. But I think what I'd like to do is maybe hear a proffer
10 of that witness' testimony before I make a final ruling on
11 it.

12 So, why don't we plan on doing that if it's something
13 that we need to do prior to starting tomorrow. Let me know
14 that. If it's something that we can do around a break, if
15 you let me know that, because it doesn't sound like it would
16 take an inordinate amount of time to develop that.

17 Okay. What's your next issue?

18 MR. MORIN: Your Honor, the only other issue is the
19 state served on Mr. Kelly and I yesterday some new
20 information or some new documents regarding a crime that had
21 occurred.

22 And if the Court will bear with me as I look at it,
23 that occurred sometime in, I think, 1985, early to mid --
24 mid to early 80's. And apparently the state is seeking to
25 add another witness to their list now after the jury has

Motions

1 been sworn or after the case has been started. And we would
2 ask that they not be allowed to do that, to add in witnesses
3 and to be providing more evidence to us after the case
4 started.

5 I understand that they have attached to their -- the
6 document they gave us, that they say they received it just
7 this week. However, of course, this incident occurred two
8 years ago. And I believe there has been plenty of time for
9 them to get these types of things to us. And I think at
10 this late hour it presents a difficulty for us in our
11 defense, particularly in the aggravation circumstances if we
12 get to that. That's what that's going to be part of.

13 THE COURT: All right, sir. Mr. Willingham.

14 MR. WILLINGHAM: Your Honor, if it please the Court,
15 this is a conviction from Michigan for possession of a
16 firearm, 1985, Your Honor, from Wayne County.

17 Now, that information was provided to the defense at
18 the initial discovery by disclosure of the rap sheet.
19 Additionally, we had an investigator go to Michigan, and
20 he's pulled reports from that. And that has been provided
21 to them. So, this is no surprise to them he has these
22 convictions from Michigan.

23 Your Honor, what we did receive in the mail yesterday
24 was the actual certified copies of the conviction. Again,
25 this is no surprise. We received it yesterday. As soon as

Motions

1 we received it, we passed it on to them.

2 Your Honor, I believe under the rules of evidence, Rule
3 803, Subsection Eight, we're not required to have someone
4 from Michigan come, because this is a certified copy of a
5 public record.

6 However, because it is a death penalty case and because
7 it is such a serious matter, we are making efforts to have
8 someone from the Wayne County Clerk's Office to actually be
9 a body here to present this information to the Court and to
10 the jury. And, so, I don't believe there is any prejudice
11 to the defendant, because he knew about it all along.

12 We could introduce it without a person, and, in fact,
13 we are trying to bend over backwards to make sure Mr.
14 Moore's rights are protected in this matter. I believe it
15 would be proper to call a witness from Michigan.

16 THE COURT: What is the prejudice, Mr. Morin? You've
17 known about it all along. The fact that it's just another
18 witness or a different witness --

19 MR. MORIN: Well, Your Honor, we knew. And it is true
20 that we had his rap sheet, and we do have some of the
21 reports that come therefrom, and we understood that they
22 were intending to do that.

23 But, obviously, they already have provided us with the
24 names and the certified copies of the ones that they had
25 intended to do. And now my concern is now that they have

Motions

1 added another one, which is basically going to -- and if I
2 could think of the word -- they're basically going to be
3 adding on the same things, add -- add on to a long train
4 they already have; and not only to this, but I'm concerned
5 how long this is going to continue. We are trying to plan
6 our situation there. And if they are going to continue to
7 add on -- and I'm not saying that I didn't know about it.

8 What I am saying is that I didn't know that they were
9 going to be presenting another witness or another document.
10 And there may be another motion we have after we sit down
11 and look at all of the witnesses that they have. But that
12 concerns me, and concerns me when I start a trial if new
13 documents continue to flow in.

14 THE COURT: Well, I think that, as I understand it,
15 this is something that is not really new to you. The only
16 thing that's new is that they intend to use it and that they
17 are using a witness that you didn't know about.

18 Quite frankly, you know, using somebody from Michigan,
19 I'd be surprised if you get the person they have got listed.
20 It might be somebody else, a proxy that comes in.

21 Certainly as long as that is a person who can testify
22 as to the validity of that record being a proper record,
23 I'll let them testify, because I don't see that there is any
24 prejudice to the defendant in that regard if you have been
25 placed on notice through discovery that this was a

Motions

1 possibility, you were aware of it.

2 Once again, I don't see the prejudice that exists, so
3 I'm going to allow it to come in at the appropriate time if
4 we get to that point.

5 MR. MORIN: That's all I have at this time.

6 THE COURT: Okay.

7 MR. GOWDY: Your Honor, we just have one very brief
8 matter.

9 And Mr. Kelly and Mr. Morin have not given us notice
10 that they intend to do this, and I know that they would if
11 they did. But out of a super abundance of caution -- Terry
12 Hadden is the other victim in this case. He has a 1988
13 conviction for contributing to the delinquency of a minor.

14 His probation was ended in 1989, which I think is
15 clearly outside the ten-year window. I just wanted to get,
16 hopefully, Your Honor, a ruling before it became an issue,
17 that he would not be impeached with a conviction that was
18 outside the ten-year time period.

19 MR. MORIN: I always try to decide how I am going to do
20 that and how to approach the conviction thing; nonetheless,
21 but as Mr. Gowdy pointed out, I believe it is outside the
22 ten-year period. And based on my normal position, I
23 certainly support the ten-year limit.

24 THE COURT: Yes, sir. All right, sir.

25 MR. GOWDY: Thank you, Your Honor.

Colloquy

1 THE COURT: All right. Anything else before we break
2 for the day, Solicitor?

3 MR. GOWDY: Not on behalf of the state, Your Honor.

4 THE COURT: From the defendant.

5 MR. MORIN: No, sir.

6 THE COURT: Well, let me thank you-all, once again, for
7 all of your hard work. We have still got a lot more hard
8 work to go.

9 If you at any time during the course of the trial -- if
10 there are problems that arise, if you need a break, if I've
11 not taken one when you need to take one, let me know.

12 I usually try to go about an hour and ten or 15
13 minutes, sometimes maybe a little longer if it's not going
14 to break up -- if we can keep from breaking up a witness.

15 But if we have been in here a little while and you've
16 got a witness that you're going to go on with a little bit
17 longer, you might want to look up at me and say it would be
18 a good time for a break if it's a good time for you, rather
19 than me stopping you in the midst of something. So, just
20 kind of keep me apprised of that. We will keep on trucking.
21 Thank you-all very much. I will see you here in the
22 morning. I will be here no later than 8:30 if you need me.

23 MR. GOWDY: Your Honor, do you object to our using the
24 overhead projector? I don't know how well Your Honor can
25 see it from where he's seated, and I don't like to display

Colloquy

1 exhibits if the Court can't see. But we were going to take
2 advantage of that if we could.

3 THE COURT: I don't have a problem with it. If it's an
4 exhibit that is admitted, you may certainly put it up there;
5 but until it is admitted, do not do that. Make sure that
6 it's properly admitted before you attempt to display it in
7 any way to the jury.

8 MR. GOWDY: Yes, sir. Thank you.

9 MR. MORIN: Your Honor, you know, I think I said that
10 was all, but just one other thing. I would like to go
11 ahead. We would be asking the state to sequester their
12 witnesses.

13 MR. GOWDY: Your Honor, I think, unlike the system that
14 I came from, it's not a matter of right to have
15 sequestration.

16 THE COURT: Right.

17 MR. GOWDY: I think the Court needs to weigh and
18 balance certain factors.

19 I would ask the Court to consider allowing us to
20 designate a case agent primarily for the purposes of
21 judicial economy to keep from having to break to go get
22 witnesses.

23 In terms of sequestration, Your Honor, we would like
24 all of the family members who are potential sentencing-phase
25 witnesses.

Colloquy

1 THE COURT: That's provided in the Victims Rights Act,
2 I think --

3 MR. GOWDY: Yes, sir.

4 THE COURT: -- that they can remain in. That's a
5 nonissue.

6 MR. GOWDY: If I can have one second, I think we can
7 resolve the other issue.

8 MR. MORIN: I obviously understand. I don't think any
9 of the family members are witnesses. I was speaking
10 primarily of the guilt phase.

11 MR. GOWDY: As long as the sequestration is mutual,
12 Your Honor --

13 THE COURT: Oh, yes.

14 MR. GOWDY: -- we don't have a problem with it.

15 THE COURT: All right. We will have sequestration
16 insofar as the guilt-phase witnesses are concerned then as
17 to both sides.

18 MR. GOWDY: Would Your Honor consider allowing us to
19 designate a case agent for purposes --

20 THE COURT: Yes, sir; yes, sir. Just let me know that
21 in the morning.

22 And one thing that I would like is that when we have
23 got witnesses that we are going to be bringing in from
24 outside, let's make sure that we have them lined up and
25 ready to go so that we don't have a lot of, you know,

Colloquy

1 looking for somebody or, you know, they've gone down to the
2 canteen or something like that. I don't want to get into
3 that.

4 If that's the case, I'm just going to let everybody sit
5 in here. I'm not going to, you know, drag out a lot of
6 stuff by that. So just make sure that you've got everybody
7 in the vicinity so that we can get them in and out.

8 MR. GOWDY: Yes, sir. Having just made a
9 representation to the Court, Deputy Willingham tells me I
10 may have spoken too soon.

11 I don't know whether -- Rusty Clevenger is a potential
12 witness. He is also an employee of our office. Steve
13 Denton is the case agent who is not an employee of our
14 office.

15 THE COURT: You don't have a problem, do you?

16 MR. MORIN: Those will be fine, Your Honor.

17 MR. GOWDY: Thank you, Your Honor.

18 THE COURT: All right. I'm glad that we're all so
19 agreeable right now. It's a good start. So, thank y'all
20 very much. I will see you in the morning.

21 END OF PROCEEDINGS OCTOBER 28, 2001
22
23
24
25

Volume Eight -- Trial -- Testimony

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) October 15 - 22, 2001
7 Spartanburg, South Carolina

8
9 B E F O R E:

10 HONORABLE GARY E. CLARY, JUDGE; and a jury
11

12
13 A P P E A R A N C E S:

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20
21
22
23 LINDA D. MOFFITT
24 Circuit Court Reporter
25

Colloquy

1 (Proceedings October 19, 2001)

2 THE COURT: Let me see the lawyers up here just a
3 minute, please, while we get the defendant in here.

4 (Bench conference held off the record.)

5 (The following takes place with the defendant present.)

6 THE COURT: All right. Just so that everyone will know
7 how we are going to proceed, please understand that since we
8 have started the trial, once you come in here for a session,
9 you be prepared to stay until I take a break.

10 Now, I understand that the solicitor's office and the
11 defendants have people that it will be necessary for them to
12 go in and out of the courtroom for various reasons in the
13 conduct of the trial, and I understand that. But anyone
14 else that -- you know, if you come in and, you know, you
15 just want to look around for ten minutes, that's not going
16 to work.

17 The jury needs to have their attention focused here;
18 the lawyers need to have their attention focused here. And,
19 quite frankly, this courthouse is probably one of the worst
20 ones in the state for noise anyway, because those doors open
21 into the main hallway where people want to stand and talk
22 and visit.

23 I am going the tell the bailiffs that if that happens,
24 you better make sure that you clear that area out there,
25 because I will clear it for you, because we are not going to

Colloquy

1 have anything that's going to cause any interruptions.

2 I have directed that this door be closed, because, you
3 know, it never fails in the middle of any trial that I have
4 ever done, there's going to be a bailiff or a police officer
5 or just anybody that will open that door and stick their
6 head in thinking that they can cut through here to get a cup
7 of coffee or to go wherever they're going to go.

8 This is not a short cut. This is a courtroom, and
9 we're going to treat it as such.

10 So everyone understands that the rules under which we
11 will operate, if you come in for a session, you're going to
12 stay for a session. If you cannot stay for that period of
13 time, then you need to leave before we get started, because
14 it is not going to be a parade in here.

15 All right. Anything from the state before we start?

16 MR. BARNETTE: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BARNETTE: Did you want to do the in-camera hearing
19 first or did you want to start with the openings?

20 THE COURT: Well, however you want to do it, wherever
21 you plan to use that. If you plan on using it quickly, you
22 better go ahead and do your in-camera matter.

23 MR. BARNETTE: Yes, sir. We would like to go ahead and
24 do that, Your Honor. We do have Mr. Gibson here.

25 THE COURT: Okay.

George Gibson (In-camera)
Direct examination by Mr. Barnette

1 MR. BARNETTE: I would like to call Mr. Gibson to the
2 stand, please.

3 GEORGE GIBSON, having been first
4 duly sworn, testified as follows:

5 THE COURT: State your name for the record, and spell
6 your last name, sir.

7 THE WITNESS: Gibson.

8 THE COURT: Your name is just Gibson?

9 THE WITNESS: George.

10 THE COURT: And your last name is spelled?

11 THE WITNESS: G-I-B-S-O-N.

12 THE COURT: Okay.

13 MR. BARNETTE: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. BARNETTE

15 Q Mr. Gibson, do you live here in Spartanburg?

16 A Yes, sir.

17 Q And back on September the 16th, 1999, where did you
18 live at, sir?

19 A On Hillside Drive.

20 Q And did you know a gentleman by the name of Mo?

21 A Yes.

22 Q Did you see him in the courtroom here today?

23 A Yes.

24 Q Can you point at him for us, please, or identify him?

25 Is he the gentleman sitting beside Mr. Kelly?

George Gibson (In-camera)
Direct examination by Mr. Barnette

1 THE COURT: Wait just a minute.

2 MR. BARNETTE: Yes, sir.

3 THE COURT: He's the one to identify him.

4 MR. BARNETTE: Yes, sir.

5 A Yes, sir.

6 Q Can you describe what he is wearing, sir?

7 A A Navy blue coat, jacket, and light blue shirt and
8 striped tie.

9 Q Okay. Thank you, sir. Back on September the 16th of
10 1999 did he come to your residence?

11 A Yes.

12 Q Okay. How many times did he come to your residence?

13 A Twice.

14 Q Okay. Can you tell the Court the first time that he
15 came to your residence, what happened?

16 A It was the night before. It was about, I guess,
17 between eight and nine and ten o'clock, something like that.
18 I can remember that. But he came by there earlier.

19 Q What happened when he came to your house?

20 A Nothing. He came by for me to do something for him.

21 Q What did he ask you to do for him?

22 A To get him something.

23 Q Okay. And what was the something he asked you to get
24 for him?

25 A Drugs.

George Gibson (In-camera)
Direct examination by Mr. Barnette

1 Q What kind of drugs?

2 A Cocaine.

3 Q And did you get any drugs for him?

4 A No.

5 Q Why didn't you?

6 A Because he didn't have any money, so he said, you know,
7 it wasn't -- couldn't be done.

8 THE COURT: Sir, you are going to have to speak up a
9 little bit.

10 Mr. Barnette, Solicitor, defense lawyers, your
11 witnesses are going to have to speak up. I mean, maybe it's
12 just me that I can't hear. But if I can't hear, I'm afraid
13 the jury can't hear. I'm afraid the court reporter can't
14 hear. So, the primary thing that you need to tell these
15 people is to speak up when they come in here.

16 MR. BARNETTE: Yes, sir.

17 Q Mr. Gibson, if you would, speak up so everybody can
18 hear you.

19 A Okay.

20 Q And speak into the microphone.

21 A All right.

22 Q And what else did he tell you, that what he was at your
23 house the first time?

24 A Well, he said he had to go to work and, and he would be
25 back.

George Gibson (In-camera)
Direct examination by Mr. Barnette

1 Q And, so, did you see him later, I guess the next
2 morning?

3 A Yeah, the next morning, yes, sir.

4 Q And when he came to your house, what happened when he
5 came back to your house the second time?

6 A Oh, I heard somebody calling me from the outside, to
7 come outside, but, you know, I was in the bed, and so I
8 didn't go.

9 And they knocked on the door. So, the roommate came to
10 me and said somebody at the door, said guy is at the door,
11 said come to the door. So, I went to the back door, and he
12 was standing there.

13 Q And who was standing there, sir?

14 A Mo.

15 Q And what did he tell you or what did he say to you when
16 you came to the door?

17 A He said I need for you to do something for me. I said
18 what. He said I need you to get me something, like that. I
19 said, well, you know, it's too late, you know. He said,
20 well, look, I been hurt. He said I been hurt and I need
21 something bad, I got to go turn myself in.

22 Q And what did you see when he was telling you those
23 things?

24 A Sir?

25 Q Did you see anything when he was telling you this?

George Gibson (In-camera)
Direct examination by Mr. Barnette

1 A Oh, yeah. He, he had a wound on him. He was bleeding.
2 I asked him what. He said he had been shot, said, you know,
3 he had to go turn hisself in. He had to go to the emergency
4 room. He asked me to take him, go with him to the emergency
5 room, but, I got, you know, I got kinda panicked, because I
6 was scared he was, you know, and I didn't want to get
7 involved, because he was shot. He was shot. He said he had
8 been shot, and he was bleeding real bad. So, I told him, I
9 said go to the emergency room. And he said come and take
10 me. I said, no, go ahead. You can make it. You know, like
11 that.

12 So, at that time he got in his truck, and he was
13 backing out of the yard, and I guess he backed into the
14 post. And at that time there was a county car coming up the
15 street, so he got out of the car and he said I give up,
16 going to turn myself in, and that was it.

17 Q And the police came there and picked him up there?

18 A Yeah. He gave hisself up. He was out there in the
19 street, and he went out in the street and said I give myself
20 up. And that was it. And I was still standing in the door
21 when all of that happened, you know.

22 MR. BARNETTE: One second, Your Honor, please.

23 (Pause.)

24 Q On the second time, Mr. Gibson, when he said he wanted
25 something, what was it he wanted?

George Gibson (In-camera)
Cross-examination by Mr. Morin

1 A Said he wanted some cocaine, right.

2 Q And then he told you about the other things afterwards?

3 A Yeah. He said, well, yeah. He said, well, I got the
4 money. He said I got money, but I said, well, you know -- I
5 saw he was bleeding too, and I been hurt, you know.

6 Q And the first time did he have any money?

7 A No.

8 Q The second time did he have money?

9 A He said he had money, yeah.

10 Q Please answer any questions Mr. Morin and Mr. Kelly may
11 have for you. Thank you.

12 THE COURT: Mr. Morin.

13 CROSS-EXAMINATION

14 BY MR. MORIN

15 Q Mr. Gibson, is it my understanding that your testimony
16 is that you had a roommate at that time?

17 A Yeah.

18 Q What was his name?

19 A Steve Knight; Steve Knight and Casey -- Casey -- Wilbur
20 Casey was there at that time. They was just spending the
21 night. It wasn't really no roommate, you know. They was
22 staying over.

23 Q And they were both there that night?

24 A They was there that night, both of them.

25 A Okay. And did you say that they came, when your

George Gibson (In-camera)
Cross-examination by Mr. Morin

- 1 roommate came and got you, you went to the back door.
- 2 A Yeah.
- 3 A Okay.
- 4 A That was Casey.
- 5 Q Can you tell me when you first remembered Mr. Moore
- 6 asking you for something?
- 7 A I didn't understand you.
- 8 Q Well, do you remember talking to the police that night?
- 9 A Talking to who?
- 10 Q Talking to the police?
- 11 A Yes. I did.
- 12 Q Okay. And at that time did you tell them everything
- 13 you knew about the case?
- 14 A No, I didn't.
- 15 Q And why not?
- 16 A Because I was afraid of getting involved with it, you
- 17 know, because it was, you know, of the nature.
- 18 Q And then later you, you came. Are you saying sometime
- 19 later you then told all of the truth?
- 20 A Well, yeah. I know I swore to tell the truth.
- 21 Q And when did you do that?
- 22 A When I met with -- wasn't on the statement the first
- 23 time. It was on the second time.
- 24 Q Now, are you saying that you gave two written
- 25 statements?

George Gibson (In-camera)
Cross-examination by Mr. Morin

1 A No. I gave -- I just added something, you know,
2 because I didn't do it the first time, because I was scared
3 of getting involved because of the nature of the thing,
4 because of the cocaine thing.

5 Q Well, when did you make the addition to your statement?

6 A September the 25th.

7 Q Of 2001, last September, a couple of weeks ago?

8 A Past.

9 Q Just a couple of weeks ago?

10 A Past, past, yeah.

11 Q And, and who did you tell that to?

12 A To the solicitor and the prosecutor.

13 Q These gentlemen right here?

14 A Yeah.

15 Q Okay. Just one moment, Your Honor.

16 (Pause.)

17 MR. MORIN: That's all I have, Your Honor.

18 THE COURT: Anything else?

19 MR. BARNETTE: Nothing further from this witness, Your
20 Honor.

21 THE COURT: All right. Thank you, sir. You can step
22 down, Mr. Gibson.

23 Anything else from the state in this regard?

24 MR. GOWDY: Not, not unless the Court wanted to hear
25 from us. I think the Court had a case in mind last night it

Colloquy

1 was going to rely upon.

2 THE COURT: Mr. Morin, do you have anything you want to
3 say?

4 MR. MORIN: Yes, sir, Your Honor.

5 Your Honor, this witness' testimony is basically that
6 Mr. Moore asked for some stuff; that he took the cocaine, is
7 what he meant. He said that he did that on two occasions.
8 He never saw any monies. He never knew whether or not Mr.
9 Moore had any money.

10 He said that when he first came to his house that night
11 that it was some seven or eight hours prior to this
12 incident.

13 I would argue that this vague recollection this
14 gentleman has about something that happened almost eight, or
15 more than six hours, almost eight hours prior to anything
16 happening is not a significant enough connection to what
17 happened at the store to be able to say that it's part of
18 this crime.

19 THE COURT: Solicitor, do you want to be heard any
20 more?

21 MR. GOWDY: Your Honor, I cannot cite Your Honor the
22 cases, because Your Honor had Dickerson before the Court
23 last night, but when I was on Westlaw last night, Your
24 Honor, I found cases more than 24 hours separating the res
25 gestae conduct from the conduct, criminal conduct, alleged

Colloquy

1 in that criminal trial. So, six years is well within any
2 window of the res gestae exception.

3 This witness testified that Mr. Moore came looking for
4 cocaine and said he had no money. He came back immediately
5 after robbing this store, shot in the arm, bleeding and
6 wanted cocaine and had money. And I think that that is part
7 of the context of the crime.

8 Your Honor, the cases that I have read, frankly, the
9 connection is much more tangential than it is in this case.

10 MR. MORIN: Just one thing.

11 THE COURT: Yes, sir.

12 MR. MORIN: This witness said that he interpreted what
13 Mr. Moore said as meaning cocaine. This witness didn't say
14 Mr. Moore asked for cocaine. That's the interpretation by
15 this witness that they are relying on to connect it.

16 THE COURT: Well, sir, I think that his testimony and
17 his credibility is going to speak for itself. I don't
18 believe that from what I have been able to observe from
19 Mr. Gibson that he was selling M & M's or lollipops down
20 there that there would be any confusion about.

21 It sounds to me like he was a dope dealer, and, you
22 know, that's something that the jury will have to sort out.
23 I think that the case of the State vs. Dickerson is
24 instructive, because it gives an analysis by the Chief
25 Justice of that case, and then also cites back to the case

Colloquy

1 of the State vs. Adams. The case of the State vs. Adams is
2 322 S. C., 114, 470, S. E. 2d., 366, a 1996 case wherein
3 there was, I think, a series of robberies that were
4 involved, people using the money to buy drugs.

5 I believe that from my finding or from my review of the
6 cases here that the evidence not only meets the issues that
7 I would consider under, let's say, a Lyle analysis but also
8 would meet a res gestae analysis under Rule Four of 803; and
9 then also Rule 403 when we look at that, I find that this
10 evidence is clear and convincing in my mind to fall within
11 the exception and that it is probative and outweighs any
12 danger of unfair prejudice to the defendant.

13 I believe that the issues presented here are such that
14 allow me to allow the state to introduce this evidence.

15 MR. GOWDY: Thank you, Your Honor.

16 MR. MORIN: Your Honor, just as a matter of procedure,
17 at the time that they call this witness, would it be
18 permissible for me to at that time raise my objection to
19 this evidence?

20 THE COURT: Yes. I think what you need to do is make
21 your objection, and I'll simply state that the objection is
22 overruled on the basis of the Court's prior ruling. And
23 that way you should be protected on the record.

24 MR. MORIN: Thank you, Your Honor.

25 MR. GOWDY: Thank you, Your Honor.

Comments by the Court

1 THE COURT: All right. Are we ready to get started
2 with our openings, gentlemen?

3 MR. GOWDY: Yes, sir, Your Honor. The state is.

4 MR. MORIN: Yes, sir. We're ready.

5 THE COURT: All right. Before we do that, once again,
6 let me remind everyone that is in here that you will stay
7 for the duration of the session. So, please make sure that
8 if you can't, that you leave now.

9 All right. Let's bring our jury back, please, sir.

10 (Two notes from jury marked Court's Exhibit Number
11 Nine.)

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Polling of the jury by the state?

15 MR. GOWDY: The state would waive, Your Honor.

16 THE COURT: By the defense?

17 MR. MORIN: No, sir.

18 THE COURT: Good morning to you, Madam Foreperson, and
19 ladies and gentlemen of the jury. It's good to see you
20 again this morning. I hope that you had a pleasant evening.
21 And we're now ready to begin the trial of this case.

22 I apologize for keeping you in the jury room for a few
23 minutes, but I had a couple of matters that I needed to deal
24 with before we got started.

25 I have received your communication that you desire to

Comments by the Court

1 start work on Sunday morning at 9:00 a.m. And certainly we
2 will abide by your wishes and are happy to accommodate you
3 in that regard.

4 Also, I've received a note from one of the jurors as to
5 the ability to take notes. In this particular case I am not
6 going to allow the taking of notes. I want all of your
7 attention focused on the testimony and evidence that will be
8 presented to you from the witness stand.

9 Ladies and gentlemen of the jury, under the law of
10 South Carolina where the state seeks the death penalty, as
11 it does here, then the trial is a bifurcated one; that is it
12 is a trial which is held in two parts.

13 First a trial is held before a jury to determine the
14 guilt or innocence of the defendant. That is the phase of
15 the trial we are presently holding.

16 At the conclusion of the first trial, should the
17 verdict of the jury be guilty, and I make no recommendation
18 to you concerning the verdict, if the defendant is convicted
19 of the crime of murder, then a second proceeding will be
20 held.

21 Now, that second proceeding is a sentencing phase at
22 which extenuating and aggravating and mitigating
23 circumstances may be introduced into evidence and considered
24 by you, the jury, should such proceeding be necessary. And
25 I will further instruct you at that time.

Comments by the Court

1 Please derive no inference from what I have just told
2 you as to what your verdict should be. The purpose of my
3 telling you this is to emphasize that you are not to
4 consider punishment or sentence in this phase of the case.
5 You are only to determine the innocence or guilt of the
6 defendant based upon the evidence that will be introduced in
7 the trial of the case.

8 Ladies and gentlemen of the jury, the case that we are
9 about to try is that of the State vs. Richard Bernard Moore,
10 the defendant. What I will say now is intended to serve as
11 an introduction to the trial of this case. These remarks
12 are not a charge on the law in this case. I will instruct
13 you on the law applicable to this case at the end of the
14 trial before you retire to consider your verdict.

15 This is merely an explanation of the procedure that we
16 will follow during the trial of this case and so that you
17 may better understand what may be happening. Once again, I
18 instruct you that you are not to take any notes during
19 course of this trial.

20 Now, the defendant, Mr. Moore, is charged by
21 indictments filed in this court with the crimes of murder,
22 possession of a firearm during the commission of a violent
23 crime, assault with intent to kill and armed robbery, the
24 elements of which will be explained to you shortly.

25 The indictments are simply the charges by which these

Comments by the Court

1 cases are brought into this court, and they are not in any
2 sense evidence of any of the allegations that they contain.

3 The defendant has pled not guilty to the indictments.
4 The state therefore has the burden of proving each of the
5 elements of the indictments beyond a reasonable doubt. And
6 it will be your duty, ladies and gentlemen, to decide
7 whether the state has met that burden of proof.

8 Your purpose as jurors is to find and determine the
9 facts. You are the sole judges of the facts. If at any
10 time I make any comment regarding the facts, you must
11 disregard it. You're to determine the facts from the
12 testimony you hear and the other evidence introduced in
13 court. It is up to you to determine the inferences which
14 you feel may be properly drawn from the evidence. It is
15 especially important that you perform your duty of
16 determining the facts diligently and conscientiously.

17 Now, on the other hand and with equal emphasis, the
18 same law that makes you the judges of the facts also makes
19 me the judge of the law. The law as given to you by this
20 Court is the only law you may consider. You must accept and
21 follow it even though you may disagree with it.

22 I cannot tell you what the facts are, and you cannot
23 disagree with me about what the law is or should be. Your
24 job is to take the law as I give it to you and apply it to
25 the facts as you find them from the testimony of the

Comments by the Court

1 witnesses and any other evidence that is introduced. And
2 after doing that, you will render your verdict, a true and
3 just verdict, under the solemn oath that you took yesterday
4 as jurors.

5 Now, until I advise you to begin your deliberations,
6 you must not discuss this case with anyone, including your
7 fellow jurors or anyone that you come in contact with in
8 this matter.

9 After the case is submitted to you, you must discuss it
10 only in the jury room among yourselves. Now, even though
11 you are sequestered, everyone involved in this case, the
12 attorneys and parties, have been advised that they are not
13 to talk to you at all. So, if you see anyone involved in
14 this case and they do not even say hello to you, keep in
15 mind that they are not being unfriendly. They are simply
16 following my instructions.

17 Now, during the trial, I instruct you, once again, that
18 you are not to read, listen to or watch any news reports
19 about this case. This includes anything that may be in the
20 newspapers, on the internet, radio or television. And, of
21 course, your activities are monitored by the jury
22 custodians.

23 It's extremely important that you keep an open mind and
24 not decide any issue in this case until all of the evidence
25 has been presented, the parties have made their closing

Comments by the Court

1 arguments and I have instructed you on the law in this case.
2 It is your solemn responsibility to determine the guilt or
3 innocence of the defendant. And your verdict must be based
4 solely on the evidence as it's presented to you during this
5 trial and on the law as I instruct you during and at the
6 conclusion of the case.

7 Now, in this just a moment the solicitor will make what
8 is called an opening statement in which he will explain to
9 you the issues in this case, or at least what the solicitor
10 thinks the issues in the case are.

11 The attorney for the defendant may also make an opening
12 statement, although he is not required to do so.

13 Now, what the attorneys will tell you during their
14 opening statements is not evidence in this case. It is only
15 their contention as to what the issues are. The evidence in
16 this case will be presented to you by the testimony of sworn
17 witnesses from the witness stand and by such exhibits as may
18 be introduced into evidence.

19 Now, from time to time during this trial you may hear
20 one of the lawyers say something like I believe we have a
21 question or a matter of law to discuss, or may we approach
22 the bench; or sometimes I might find it necessary to excuse
23 you from the courtroom for a short while so the attorneys
24 and I can actually discuss a matter of law.

25 Now, the reason for this is because you are the judges

Comments by the Court

1 of the facts in this case. And sometimes when I'm
2 discussing matters of law with the attorneys, it may be
3 necessary for me to make some comment as to the facts in
4 connection with ruling whether or not a particular law
5 applies.

6 Now, once again, I am not supposed to tell you what I
7 think the facts are, so I will excuse you from the courtroom
8 while these discussions take place so that in no way will
9 you be influenced by anything that I might say or do in
10 connection with the facts.

11 Now, in determining what the true facts are in this
12 case you must decide whether or not the testimony of the
13 witnesses is believable.

14 It will be my responsibility to rule as a matter of law
15 as to whether certain testimony is admissible at all or not.
16 But once the testimony is admitted, whether or not you
17 believe it is solely for you to determine.

18 In deciding whether to believe a witness you have the
19 right to consider the interest of any witness, the bias of
20 any witness, the prejudice of any witness, the opportunity
21 for the witness to have seen the matters and things about
22 which the witness may testify and the way the witness acts
23 on the witness stand.

24 You have a right to evaluate anything that is in the
25 record that will help you evaluate the testimony of the

Opening statements

1 witnesses. That means that it is your duty to pay close
2 attention to these witnesses, to observe them and to listen
3 to them and to pay very close attention to the attorneys and
4 to the Court.

5 Do not let your thoughts wander, but give strict
6 attention to all of the testimony in this case, so that at
7 the end of all of that testimony after the closing arguments
8 of the lawyers and then the charge or instruction on the law
9 by this Court, you will then be in a position to determine
10 what the true facts are and to apply the law to those facts
11 and thus render a true and just verdict.

12 Now, Madam Foreperson, it will your added duty to
13 preside in the jury room and be the jury spokesperson here
14 in court. It will also be your duty to write the verdict in
15 this case, but I'll give you further instructions about that
16 at the conclusion of the trial.

17 We will now begin the trial of the case.

18 Opening statement, Solicitor.

19 MR. BARNETTE: Thank you, Your Honor. May it please
20 the Court.

21 Good morning, Madam Forelady, and ladies and gentlemen
22 of the jury.

23 My name is Barry Barnette. It is my pleasure to
24 present the case of the State of South Carolina, along with
25 Trey Gowdy and Donnie Willingham.

Opening statements

1 We represent the victim in this case, James Mahoney, as
2 well as Terry Hadden in this case, as well as the victim's
3 family, Mr. and Mrs. Mahoney, sitting behind us. They're
4 the parents of James Mahoney.

5 What I would like to do is take you back to
6 September the 16th of 1999. On that night, well, actually
7 that early morning hours, James Mahoney was working third
8 shift at Nikki's Speedy Mart.

9 If you're familiar with the Whitney area on 221
10 Highway, as the road is called, Nikki's Speedy Mart is
11 located on the corner there across from the, basically,
12 Value Furniture, Spartan Plaza, which is a plaza mall, and
13 Crenshaw Theater. That area is what we are talking about.

14 As a matter of fact, there is a car wash on the corner
15 across from where Nikki's Speedy Mart was. If you're
16 familiar with that area, you cut across that road and
17 Highway Nine is like a shortcut, the Boiling Springs side.

18 He was working the third shift there. He was a
19 small-framed person. As the autopsy will show, he was 5' 9"
20 and 145 pounds. And he had worked there for three years.
21 In that case Nikki, Nikki's owner, will be testifying and
22 telling you what kind of worker he was. He was a hard
23 worker.

24 While he was working that night behind the counter in
25 this store, Terry Hadden had just got off the second shift.

Opening statements

1 He had worked at Wise Potato Chips. After he got off the
2 shift, he stopped by Nikki's Speedy Mart. He got him a
3 couple of hot dogs, got him a soda. He sat down and ate
4 those and was talking to James Mahoney at that day or that
5 night in the early morning hours.

6 Then after, he decided to go play the machines across
7 on the other side. While he was playing the machine on the
8 other side while James was doing his work there at Nikki's
9 Speedy Mart, the defendant in this case, Richard Moore, came
10 into Nikki's Speedy Mart.

11 Mr. Moore a week before had lost his job at Kohler. He
12 had pawn tickets on him. He had been in previously earlier
13 that night and went to a gentleman that you will hear
14 testifying by the name of Gibson, went and wanted to buy
15 crack cocaine and didn't have any money to buy it.

16 He comes into the store and gets a few items, and he
17 takes these items up to the counter. Terry Hadden will tell
18 you that he heard James say what the hell are you doing.

19 When he did that, he turned around. And when he turned
20 around, he saw the defendant, Richard Moore, pull both of
21 James Mahoney's hands like that and point a pistol right at
22 him.

23 Terry Hadden will the tell you had he pointed the
24 pistol at him he said don't move. The pistol then dropped
25 and hit the floor. The first shot was fired at Terry

Opening statements

1 Hadden.

2 Terry Hadden sat on the floor as still as he could. He
3 heard some more gunshots. He heard moving in the store.
4 Then he heard the front door open and somebody go out the
5 front door. Then he heard a truck start and left. And then
6 he got up.

7 When he got up, he found James Mahoney behind the
8 counter shot and dying. He went outside the store. He came
9 back in and called the police.

10 And the counter that James Mahoney was working behind
11 is like this counter. It's about the same length, a wider
12 counter. The only way you can get to the counter is through
13 a door.

14 And like James was working behind the counter, he would
15 have been behind the counter like this. He'd had to go
16 through that door to get out of the store, and vice versa,
17 to get back behind the counter.

18 The police came to the scene. And when they came to
19 the scene they found that .45 pistol that was stolen from
20 the store, as well as a blue bag that contained the money
21 from the store.

22 They also found where the defendant, Mr. Moore, had
23 been standing in front of the counter, a trail of blood.
24 The analysis later showed that blood was that of Mr.
25 Moore's. It started from the front of the counter and went

Opening statements

1 around. It was on the door coming through and it goes to
2 top of the counter of James Mahoney. As he stepped over the
3 body, he went through the desk drawers looking for the
4 money, wherever he found the money. And you will see the
5 blood that the evidence will show on the desk.

6 He went back over to the body and back out through the
7 store and got in his truck. When the police found this out,
8 Nikki Fowler gave them this information. They sent a BOLO
9 out. In that BOLO they later found a .45 caliber pistol on
10 Highway Nine at the California Avenue intersection. And
11 that pistol was tested later and found to have Richard
12 Moore's blood on that pistol and was found to be the pistol
13 that was stolen from the Speedy Mart that night.

14 Mr. Moore continued on. He went back to George
15 Gibson's house. You will hear Mr. Gibson's testimony. He
16 went up to the door, and he wanted to get crack cocaine
17 then. He had the money to get it.

18 And Mr. Gibson will tell you that he saw where he was
19 shot. And he said, man, what's wrong with you, said you
20 need some help. He said I've done something wrong. He said
21 can you help me and take me to the hospital.

22 Mr. Gibson didn't want to get involved, so Mr. Moore
23 got back in his truck and pulled back into a pole. He was
24 attempting to drive away, and that's when Officer Bobby
25 Rollins came up, and other sheriff's department.

Opening statements

1 In the truck they found the blue bag with over \$1,400
2 in money in it with blood on the money from Nikki's Speedy
3 Mart.

4 Inside there was a knife they found in the truck, and
5 also the sheriff's department went back to Nikki's Speedy
6 Mart to Mr. Mahoney -- they also found another knife that
7 didn't belong, didn't belong.

8 That gives you an idea of what you are going to be
9 seeing here in court the next couple of days, ladies and
10 gentlemen. What we would like you to do is keep -- you
11 bring one thing to court with you when you come to hear this
12 case. You bring your common sense. You bring your everyday
13 experiences to court here today. But you are going to do
14 like the judge said. You're judges of the facts. You're
15 going to determine what happened this day from the witnesses
16 that you will hear from the witness stand. What we would
17 like for you to do is apply these everyday experiences and
18 realize what happened this day.

19 In this case Richard Moore has been charged, as the
20 judge told you, with murder, the murder of James Mahoney;
21 possession of a weapon pistol, for a violent crime, a pistol
22 that he used; and assault with intent to kill. Excuse me.
23 He shot Terry Hadden, the first shot that was fired, as well
24 as armed robbery where he took the money and robbed Nikki's
25 Speedy Mart and left him laying on the ground.

Opening statements

1 We thank y'all for being here. We thank you for being
2 here. You are a very important part of our system. Without
3 you, our system of justice couldn't operate.

4 Thank you, Your Honor.

5 THE COURT: Mr. Morin.

6 MR. MORIN: Ladies and gentlemen of the jury, my name
7 is Michael Morin. Along with Keith Kelly and Jennifer
8 Johnson, we represent Richard Moore.

9 Richard Moore is a victim too. On September the 16th,
10 1999, when Richard Moore walked into that store, he had
11 money. He walked over to the cooler and got a can of beer
12 and walked over to the counter and asked for a pack of
13 cigarettes. They got put in the bag.

14 Mr. Hadden, as Mr. Barnette talked about, was in a
15 corner playing a video poker machine.

16 Now, at that point words were exchanged between
17 Mr. Moore and Mr. Mahoney. Mr. Mahoney at that point
18 produced a .45 caliber semiautomatic handgun.

19 Mr. Moore managed to stop him or to get that away from
20 him, but during the time that he did that, Mr. Mahoney
21 produced a second .44 Magnum revolver, pointed it at Mr.
22 Moore and shot him.

23 The bullet passed through -- struck on his chest and
24 entered his left arm, exited his left arm, went across the
25 store, struck a video poker machine and fragmented it in

Opening statements

1 several pieces.

2 At that point Mr. Moore had vented himself having
3 already been shot by Mr. Mahoney who had produced now two
4 weapons.

5 After the shooting Mr. Moore was back behind the
6 counter. There was a bag of money which he did take. There
7 was also another .32 caliber weapon back there that also
8 belonged to Mr. Mahoney. Now, those are undisputed facts.

9 And I am not going to get into the interpretations of
10 the other evidence Mr. Barnette has at this point.

11 Mr. Moore and I and Mr. Kelly simply appreciate your
12 close attention, because those are undisputed facts. No
13 weapon was shot by Mr. Mahoney for some apparent reason.

14 The state's going to argue that this was a murder.
15 They are going to argue it's a murder. They are not going
16 to dispute that Mr. Mahoney produced both weapons; they are
17 not going to dispute that Mr. Moore was shot first.

18 They are going to turn in this, and this is not. This
19 is a man confronted by an armed man who had a split second
20 in a small area to decide what he was going to do to stay
21 alive.

22 And it's fortunate. You will hear from the medical
23 testimony that his injuries were significant. That's what
24 this case is going to be about.

25 And what I would like, and I am sure you will, listen

Opening statements

1 to the evidence. Listen to the witnesses. We want you to
2 use your common sense as well, judging the credibility,
3 judging what they say happened that day.

4 But keep in mind Mr. Moore went in that store with no
5 gun. Mr. Mahoney, three guns. The first person that was
6 shot was that victim right there.

7 And with that, I am going to leave you at this point.
8 And I appreciate your paying attention that I am sure you
9 will give to this case. Thank you.

10 THE COURT: Call your first witness, please, Solicitor.

11 MR. GOWDY: Your Honor, may it please the Court, the
12 state would Terry Hadden.

13 TERRY HADDEN, having been first
14 duly sworn, testified as follows:

15 THE COURT: Please state your name for the record. And
16 spell your last name, sir.

17 THE WITNESS: Terry Hadden, H-A-D-D-E-N.

18 THE COURT: All right.

19 Solicitor, before we start presenting the testimony, I
20 think since you are going to use the screen, the overhead
21 projector, I'm going to get the bailiffs to place one more
22 chair in the jury box and let the entire jury slide down one
23 seat so that all of the members can see properly.

24 MR. GOWDY: Yes, sir, Your Honor.

25 Your Honor, if it please the Court, I was telling

Terry Hadden
Direct examination by Mr. Gowdy

1 Deputy Willingham, I may actually wait until the end of his
2 testimony to use this.

3 THE COURT: No problem. We will let them go ahead and
4 move. That way you won't have to make that move at that
5 time.

6 MR. GOWDY: Thank you, Your Honor.

7 THE COURT: Ladies and gentlemen of the jury, if at any
8 time you have a problem seeing, kinda give me a wave or
9 clear your throat or something, and we'll see what we can do
10 to accommodate you if we need to -- it's up to you, lady
11 here on the end. If you need to maybe move around, just let
12 me know, and we will take whatever steps we have to to
13 accommodate you.

14 All right, Solicitor.

15 MR. GOWDY: Thank you Your Honor.

16 DIRECT EXAMINATION BY MR. GOWDY

17 Q Mr. Hadden, I want you to introduce yourself to the
18 jury. Tell them how old you are and where you work.

19 A I am Terry Hadden. I am 52 years old. I work at Wise
20 Snacks Company.

21 Q Mr. Hadden, I want to get you, if you would, to speak
22 up where the last two ladies in the jury box can hear you.
23 I want you to feel like you are yelling at me. Okay?

24 A Okay. Terry Hadden. I'm 52 years old. I work at Wise
25 Foods.

Terry Hadden
Direct examination by Mr. Gowdy

- 1 Q What do you do at Wise Foods, Mr. Hadden?
- 2 A I work in the warehouse and load trucks.
- 3 Q How long have you been there?
- 4 A Eight years.
- 5 Q What did you do before that?
- 6 A I worked at Palmetto Textiles for 15 years.
- 7 Q Is that also in Spartanburg, Mr. Hadden?
- 8 A Yes, sir.
- 9 Q Have you been in Spartanburg all of your life?
- 10 A No, sir.
- 11 Q Where else have you lived other than Spartanburg?
- 12 A I was born and raised in Gaffney.
- 13 Q Mr. Hadden, have you suffered an injury to your eye?
- 14 A Yes, sir.
- 15 Q Which eye is it?
- 16 A My right eye.
- 17 Q What kind of injury have you suffered?
- 18 A I was stuck in the eye when I was 12 years old with a
- 19 stick.
- 20 Q What kind of vision do you have in your bad eye?
- 21 A Zero.
- 22 Q Do you have a driver's license, Mr. Hadden?
- 23 A Yes, sir.
- 24 Q Is that a regular driver's license or any kind of
- 25 special driver's license?

Terry Hadden
Direct examination by Mr. Gowdy

1 A A regular driver's license.

2 Q Have you ever had a commercial truck driver's license?

3 A No, sir.

4 Q Have you ever driven a truck?

5 A Yes, sir.

6 Q Have you been working ever since you were injured? I
7 mean, have you had a job since you were, say, out of high
8 school?

9 A Yes, sir.

10 Q Mr. Hadden, are you familiar with a store in
11 Spartanburg called Nikki's?

12 A Yes, sir.

13 Q Where is Nikki's located?

14 A On 221.

15 Q What kind of store is Nikki's? If somebody went to
16 Nikki's, what kind of things would you do at Nikki's?

17 A Well, they have -- they sell hot dogs and hamburgers,
18 and you can get beer and cigarettes. And they have got
19 poker machines in there.

20 Q Is it sort of a half way kind of a cross between a
21 restaurant and a convenience store?

22 A Yes, sir.

23 Q Back in 1999, how frequently would you go in to
24 Nikki's?

25 A I went in Nikki's for about four years probably every

Terry Hadden
Direct examination by Mr. Gowdy

1 other day.

2 Q You say every other day.

3 A Yes, sir.

4 Q Would you go in at any certain time?

5 A Yes, sir, when I got off from work.

6 Q What shift did you work, Mr. Hadden?

7 A The second shift.

8 Q Help me with shifts. Tell me when the second shift
9 starts.

10 A Went in at 3:30 and got off at 12:00.

11 Q 3:30 p.m. and got off at 12:00 midnight?

12 A Yes, sir.

13 Q Did you know any of the employees at Nikki's?

14 A Yes, sir.

15 Q Which ones did you know?

16 A Well, the only one I really knowed by name and had
17 anything to do with was Jamie.

18 Q You called him Jamie?

19 A Yes, sir.

20 Q Do you refer to James Mahoney?

21 A Yes, sir.

22 Q How long had you known Mr. Mahoney, Mr. Hadden?

23 A I started going in that store probably about four years
24 after I went to work for Wise.

25 Q I want to go back, Mr. Hadden, to September the 16th,

Terry Hadden
Direct examination by Mr. Gowdy

1 1999, a little bit over two years ago. When you got off --
2 did you work that day?

3 A Yes, sir.

4 Q When you got off work that night at midnight, I want
5 you to tell the jury where you went.

6 A Okay. When I got off at twelve o'clock, I took a
7 friend home from work. I come back by Nikki's. I went in
8 there and got me two hot dogs and a Coke.

9 Q Who made those hot dogs for you?

10 A James.

11 Q Did you pay for your hot dogs and your Coke?

12 A Yes, sir.

13 Q What did you do when you got your hot dogs and Coke?

14 A I left my hot dogs and Coke, and me and Jamie sat there
15 and talked for a few minutes. And I asked Jamie has anybody
16 hit the poker machines, and he said not on his shift.

17 Q What was James doing?

18 A He was sitting there watching T. V.

19 Q Anything in particular you remember that he was
20 watching?

21 A That night we was discussing the hurricane that was
22 supposed to hit the coastline down there.

23 Q A hurricane was supposed to hit the coast back two
24 years ago?

25 A Yes, sir.

Terry Hadden
Direct examination by Mr. Gowdy

1 Q Were you watching -- did you watch T. V. too?

2 A I was sitting there eating my hot dog and things. Me
3 and him was just talking about where it was going to hit at.

4 Q After you ate your hot dogs and asked whether or not
5 anybody had won playing those video machines, what did you
6 do after that, Mr. Hadden?

7 A I told him I was going to go over there and put a
8 couple of dollars in there and see if I could hit it.

9 Q Mr. Hadden, I want to ask you, how big was Nikki's
10 Convenience Store if we just use the area from these tables
11 right here forward? How big is Nikki's Convenience Store?

12 A About from where you at to the wall, I would say.

13 Q How about in terms of a depth?

14 A Thirty feet. I really don't know.

15 Q Would it help you explain the inside of Nikki's
16 Convenience Store to the jury if you had a diagram?

17 A I could show them the inside of it.

18 Q If you had a diagram?

19 A Yes, sir.

20 MR. GOWDY: Your Honor, I would like to have this
21 marked. I don't think there is any objection.

22 THE COURT: No objection?

23 MR. GOWDY: No, sir.

24 THE COURT: All right.

25 MR. GOWDY: Just mark this as a demonstrative aid.

Terry Hadden
Direct examination by Mr. Gowdy

1 (Diagram marked State's Exhibit Number Thirty-one for
2 Identification.)

3 MR. GOWDY: Thank you, Your Honor.

4 Would the Court permit Mr. Hadden to step down provided
5 he kept his voice up?

6 THE COURT: As long as he will keep his voice up.

7 MR. GOWDY: Thank you, Your Honor.

8 (Whereupon, the witness left the stand.)

9 Q Mr. Hadden, please come down. Keep your voice up.
10 Okay? This lady back here has got to be able to hear what
11 you say, and the Court has got to be able to hear what you
12 say. Okay.

13 I am showing you -- well, let me ask you. Is this a
14 proximate diagram of the inside of Nikki's Convince Store as
15 it existed in September of 1999?

16 A Yes, sir.

17 Q Show the jury where the front door is.

18 A Right here is the front door. All right. The front
19 door. Here is where I was sitting at, right here.

20 Q When you opened the front door, as near as you can
21 recall from two years ago, did anything happen when you
22 opened the front door?

23 A A bell goes off.

24 Q A bell?

25 A Yeah. Let's somebody know that somebody is coming in.

Terry Hadden
Direct examination by Mr. Gowdy

1 Q All right. In the corner closest to you, I see the
2 word table with a circle drawn around it. What kind of
3 table was that?

4 A As you are going through this door here, you go in --
5 this is another part of the building, and it's closed off
6 from this part.

7 Q Okay. So that's not Nikki's.

8 A No, sir.

9 Q Okay. Is there a door there, Mr. Hadden?

10 A No, sir. Two doors. A door here and one right there.

11 Q Okay. Where did you eat your hot dog?

12 A Right over here at the bar. This is the bar right
13 here.

14 Q Where did James Mahoney work?

15 A James was sitting here. This is the back of the
16 counter here. He was sitting right in here. Right there,
17 that's the door that goes in. He comes out. He was sitting
18 there on a stool.

19 Q Okay. Where was the television he was watching?

20 A The television was setting right in here, right in, on
21 the bar there.

22 Q All right. I believe your testimony, Mr. Hadden, was
23 after you ate your hot dogs you went and tried to play one
24 of those video games. Where were you sitting to play that
25 video game?

Terry Hadden
Direct examination by Mr. Gowdy

1 A I was sitting right in here, right there.

2 Q Is this diagram accurate in that there were five
3 videos?

4 A Yes, sir.

5 Q Is it accurate that you were sitting in the middle?

6 A No, sir. This diagram shows it in the middle. It was
7 sitting in this chair here.

8 Q You were sitting in number four?

9 A Four.

10 Q Okay. I am going to ask you to take your seat again,
11 Mr. Hadden.

12 (Whereupon, the witness returned to the stand.)

13 Q And I want, I want you to be sitting in the chair where
14 you were sitting and playing video poker, as you sit right
15 now. And I hope I'm going to back up until I get to where
16 the counter would have been inside Nikki's Convenience
17 Store. Okay?

18 A Okay. About right there.

19 Q Right here?

20 A Somewheres around there, yes, sir.

21 Q I'm not good at distances, but, for the record,
22 20 feet?

23 A Yes, sir.

24 Q After you ate your hot dog, can you give the ladies and
25 gentlemen of the jury an estimate about what time in the

Terry Hadden
Direct examination by Mr. Gowdy

1 morning it would have been?

2 A When I left the counter to go to the poker machine, it
3 was probably one o'clock.

4 Q 1:00 a.m.

5 A Yes, sir.

6 Q Tell the ladies and gentlemen of the jury what happened
7 from 1:00 a.m. to, say, 3:00 a.m. inside Nikki's Convenience
8 Store.

9 A Well, around 15 after 1:00 or so, a little after 1:00
10 there, James got busy. There was people coming in and out
11 of there, all of the time. He got kind of busy there. He
12 had six or seven people in there wanting hot dogs and stuff.

13 Q Mr. Hadden, six or seven people. I'm going to have to
14 get you to talk a little slower where I can follow you.

15 Okay?

16 A Yes, sir.

17 Q Six or seven people wanted hot dogs.

18 A Yes, sir.

19 Q Okay. Who made them for them?

20 A Jamie.

21 Q What were you doing while this was going on?

22 A I was over there shooting the poker machine.

23 Q Did you happen -- and tell me what you heard -- but did
24 you happen to hear any conversation between Mr. Mahoney and
25 any of the customers?

Terry Hadden
Direct examination by Mr. Gowdy

1 A No, sir.

2 Q All right. Anything else other than -- you said the
3 store got busy waiting on customers. Anything else you hear
4 or see without telling me what you heard?

5 A Well, after he got the hot dogs finished and
6 everything, everything got quiet again. Everybody was gone.
7 They was just like a break in there.

8 Q Did Mr. Mahoney, did James, ever leave Nikki's
9 Convenience Store that night even for a brief period of
10 time?

11 A Yes, sir.

12 Q Tell the ladies and gentlemen of the jury about that.

13 A Well, there was a black man come in the store and asked
14 Jamie did he have a car tool, that he was having trouble
15 getting his tire out of a car out there in the parking lot.

16 Q Having trouble with his tire?

17 A Yes, sir.

18 Q And asked Mr. Mahoney for a tire tool?

19 A Yes, sir. He said his wouldn't work on the nuts.
20 Jamie told him he had one that would work on any of them.
21 He had the four-way kind.

22 Q So what happened?

23 A Jamie went out of the store with the man and was out
24 there probably two minutes and come back in.

25 Q What happened after that?

Terry Hadden
Direct examination by Mr. Gowdy

1 A Jamie went back over there and sat down watching T. V.

2 Q The gentleman that borrowed the tire tool, did he ever
3 come back in?

4 A Yes, sir. About five minutes later he come back in
5 there and gave Jamie the tire tool back and thanked him.
6 And Jamie told him no problem. And he left.

7 Q Do you recall, Mr. Hadden, about what time of the
8 morning this might have been?

9 A No, sir.

10 Q Let's go forward to about three o'clock, a.m., 3:15
11 a.m., Mr. Hadden.

12 Tell the ladies and gentlemen of the jury what happened
13 about 3:00 a.m. at Nikki's Convenience Store on September
14 the 16th.

15 A There was a black man come in the store. And as he
16 come in the store and got in the store, he looked over at
17 me, glanced at me. I glanced at him. He walked toward the
18 cooler. I turned back around and played the poker machine.

19 Q Can you describe the person that you saw come in the
20 store that night?

21 A He was a big guy, is all I could tell you right then.

22 Q Do you see him today?

23 A Yes, sir.

24 Q Could you tell the ladies and gentlemen of the jury
25 where he is?

Terry Hadden
Direct examination by Mr. Gowdy

1 A He's sitting right over there.

2 Q That's the same person you saw walk in the store at
3 three o'clock in the morning?

4 A Yes, sir.

5 Q I want you to be real clear, Mr. Hadden. Tell the jury
6 exactly what you saw after this defendant walked into the
7 store.

8 A Right as he walked in the cooler, I turned around and
9 was shooting the poker machine. The next thing I know of
10 anything going on in the store is when I heard Jamie say,
11 "What the hell do you think you are doing?"

12 Q Now, when you say James said, "What the hell do you
13 think you are doing," was it in a loud tone of voice?

14 A Yes, sir.

15 Q Had you heard any other conversations between
16 Mr. Mahoney and this defendant prior to that comment?

17 A No, sir.

18 Q All right. Mr. Hadden, tell the ladies and gentlemen
19 of the jury what -- was your back turned when you heard that
20 comment?

21 A Yes, sir.

22 Q Tell the ladies and gentlemen of the jury what you did
23 after you heard the comment, "What the hell you think you
24 are doing?"

25 A Well, them chairs that you sit on is like these ones I

Terry Hadden
Direct examination by Mr. Gowdy

1 sat in. They will turn.

2 I made a turning motion around to see what was going
3 on. And as I did, that man right there, Mr. Moore, had
4 Jamie by both of his hands with one of his hands. As I
5 turned around, he come around and come up with a gun and
6 told me not to move.

7 Q Who had the gun in their hands, Mr. Hadden?

8 A Mr. Moore.

9 Q You testified, Mr. Hadden, that he had both of James
10 Mahoney's hands in his hand.

11 A One of his hands -- he had both of his hands in one of
12 his hands, yes, sir.

13 Q Show me what you mean by that. Tell me how to put my
14 hands. Tell me how to put them like you saw them.

15 A His hands was like that, Jamie's was. And he had Jamie
16 like that there with one hand, like that right there. And
17 he had both hands covered.

18 Q How long did it take you to turn around, Mr. Hadden,
19 from the time you heard, "What the hell do you think you are
20 doing?"

21 A Just as quick as I heard him say that, I turned around.

22 Q Mr. Hadden, this courtroom is not set up exactly like
23 Nikki's Convenience Store, obviously. Which direction would
24 you have turned to see what was going on behind you?

25 A I would be sitting at the wall like this. I come

Terry Hadden
Direct examination by Mr. Gowdy

1 around this way. It would be to my right side. I come
2 around on the stool.

3 Q Okay. All right. I am going to ask you. I am going
4 to ask you this question. Which one of your eyes do you see
5 out of?

6 A I see out of my left eye.

7 Q This eye?

8 A Yes, sir.

9 Q So you are turning like that?

10 A Yes, sir.

11 Q How far around would you have turned to be able to have
12 seen this, Mr. Hadden?

13 A I had to come all of the way around.

14 Q Tell the ladies and gentlemen of the jury, or show them
15 as best you recall Mr. Moore's, the defendant's, motion when
16 he presented the gun at you.

17 A Like I say, when I heard Jamie say what he said, I
18 turned. As I turned, Mr. Moore turned with me and come up
19 with a gun and told me not to move.

20 At that instant, he fired. He shot. The next thing I
21 realized, I was laying in the floor.

22 Q Mr. Hadden, was there anybody else in this store other
23 than you and Mr. Moore and Mr. Mahoney?

24 A No, sir.

25 Q Is that the first shot you heard that night, was the

Terry Hadden
Direct examination by Mr. Gowdy

- 1 one at you?
- 2 A Yes, sir.
- 3 Q If you would, step down here, please, Mr. Hadden.
- 4 (Whereupon, the witness left the stand.)
- 5 Q I'm referring back to State's Thirty-one for I. D.
- 6 purposes, a demonstrative aid. I want you to point for the
- 7 ladies and gentlemen of the jury. And let's get where they
- 8 can all see. Stand back around there and let the last two
- 9 ladies see. Tell the jury where you were siting.
- 10 A I was sitting right here.
- 11 Q And tell the jury where Mr. Moore was when he pointed
- 12 the gun at you.
- 13 A He would be right here, in this position right here.
- 14 Q And where was Mr. Mahoney?
- 15 A He was right here.
- 16 Q And where were his hands?
- 17 A On the bar here.
- 18 Q Where were -- do you know whether Mr. Moore came up
- 19 with his left hand or right hand?
- 20 A No, sir. He would be turning this way and had his
- 21 hands there. So, he come back around this way. So, it had
- 22 to be his right hand as far as the way he come in. He had
- 23 his left and come around with his right.
- 24 Q After you were fired at, what did you do?
- 25 A After he shot, instantly as he pulled the trigger, the

Terry Hadden

Direct examination by Mr. Gowdy

1 next thing I realized, I don't even remember hitting the
2 floor or nothing. I hit the floor.

3 Q And then what did you do?

4 A I laid there. As I hit the floor and fell, shooting
5 started inside. That's when the shooting broke out inside.

6 Q All right. I want you to take your seat.

7 (Whereupon, the witness returned to the stand.)

8 Q How many times were you shot at, Mr. Hadden?

9 A One time, I reckon.

10 Q After that shot, is it your testimony you hit the
11 floor?

12 A Yes, sir.

13 Q Did you play dead, Mr. Hadden?

14 A Yes, sir.

15 Q Did you know whether or not you had been shot,
16 Mr. Hadden?

17 A At the time, no, sir.

18 Q As you laid there in the floor, Mr. Hadden, did you
19 count the number of other shots that you heard?

20 A No, sir.

21 Q Did you see anything else after you hit the floor?

22 A No, sir.

23 Q Did you hear anything else after you hit the floor?

24 A Only when Mr. Moore left the building.

25 Q What did you hear?

Terry Hadden
Direct examination by Mr. Gowdy

- 1 A I heard the doorbell as he went out.
- 2 Q Did you hear him say anything else?
- 3 A I heard him say, "Let's get the hell out of here."
- 4 Q "Let's get the hell out of here"?
- 5 A Yes, sir.
- 6 Q Mr. Hadden, are you familiar with guns?
- 7 A No, sir. As far as shotgun or something like that
- 8 there, yes, sir.
- 9 Q Did Mr. Moore point the gun directly at you,
- 10 Mr. Hadden, or was it in your general direction?
- 11 A He pointed it dead at me as I turned.
- 12 Q Did you happen to have a chance, Mr. Hadden, to see
- 13 whether the gun was big or small?
- 14 A As I turned, the gun looked like a cannon to me.
- 15 Q Mr. Hadden, would Mr. Moore have been as close as you
- 16 and I are here when he pulled the gun on you?
- 17 A Yes, sir.
- 18 Q Have you ever been shot at before, Mr. Hadden?
- 19 A No, sir.
- 20 Q Did you ever hear James Mahoney say another word after
- 21 he said, "What the hell do you think you are doing?"
- 22 A No, sir.
- 23 Q As you were laying on the ground, Mr. Hadden, did you
- 24 make an effort to count the number of shots that were fired
- 25 inside Nikki's Convenience Store?

Terry Hadden
Direct examination by Mr. Gowdy

1 A No, sir.

2 Q After Mr. Moore left, what did you do?

3 A After I heard him -- after I heard him jump in his car
4 or truck or whatever he had at that time, I didn't know what
5 it was, he took off up 221. I run out of the building.

6 Q Was there anything distinctive about the vehicle that
7 he was in, Mr. Hadden?

8 A It had -- it sounded like he had a loud muffler on it
9 when he took off.

10 Q You said a loud muffler?

11 A Yes, sir.

12 Q Did you happen to notice which direction Mr. Moore's
13 vehicle went to or toward?

14 A Well, the sound of it and everything, he went back down
15 221, back toward Chesnee.

16 Q At some point did you walk around the counter,
17 Mr. Hadden, and check on James Mahoney?

18 A Yes, sir. I went back in the building and called
19 9-1-1.

20 Q Which phone did you use?

21 A The one that they got there on the wall there.

22 Q Would that have been on the customer's side of the
23 counter or on the James Mahoney's side of the counter?

24 A You would have to go on the back side of the place
25 where Jamie was to call.

Terry Hadden
Direct examination by Mr. Gowdy

- 1 Q Did you see Mr. Mahoney when you went back there to
2 make the call?
- 3 A Yes, sir.
- 4 Q Tell the ladies and gentlemen of the jury what you saw.
- 5 A Jamie was laying face down with a gun about two inches
6 from his hand, and he was not breathing.
- 7 Q Mr. Hadden, do you know whether or not James Mahoney
8 carried a gun on his person at work?
- 9 A Yes, sir.
- 10 Q How do you know that?
- 11 A Because he kept his in his back, the back of his
12 britches. Everybody could see it.
- 13 Q Back in there?
- 14 A Yes, sir.
- 15 Q Do you know, or had you ever seen any other firearms or
16 guns at Nikki's Speedy Mart?
- 17 A No, sir.
- 18 Q After you called 9-1-1 did law enforcement, police
19 officers, eventually come to Nikki's?
- 20 A Yes, sir.
- 21 Q Did you meet with somebody from law enforcement?
- 22 A Yes, sir.
- 23 Q Were you interviewed by somebody in law enforcement,
24 Mr. Hadden?
- 25 A Yes, sir.

Terry Hadden
Direct examination by Mr. Gowdy

1 Q Were you taken down to the Spartanburg County Sheriff's
2 Department?

3 A Yes, sir.

4 Q Would you tell the ladies and gentlemen of the jury
5 about what time of the day or night you would have been
6 taken down to the Spartanburg County Sheriff's Department?

7 A Around 4:00 a.m. in the morning.

8 Q Would this have been an hour after the incident?

9 A Yes, sir.

10 Q Could it have been a couple of hours after the
11 incident?

12 A No, sir.

13 Q Do you remember the investigator that you talked to?

14 A No, sir.

15 Q Do you remember talking to an investigator?

16 A Yes, sir.

17 (Voluntary statement of Terry Dean Hadden marked
18 State's Exhibit Number Thirty-two for Identification.)

19 Q Mr. Hadden, I am going to show you what has been marked
20 for identification purposes as State's Exhibit Thirty-two
21 and ask you whether or not that is your signature at the
22 bottom of that page. Do you see where I am talking about,
23 the signature?

24 A Yes, sir. Okay.

25 Q Is that your signature?

Terry Hadden
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q Mr. Hadden, I want you to take just a minute and read
3 over that statement, and look up at me when you are through.
4 Okay?

5 A Okay.

6 (Pause.)

7 Q Would that have been a statement that you made within a
8 couple of hours after yourself being shot at at Nikki's
9 Convenience Store on September the 16th?

10 A Yes, sir.

11 Q If you had told law enforcement that this defendant
12 told Mr. Mahoney to get the hell back --

13 MR. MORIN: Objection, leading.

14 THE COURT: Can he get the question out first?

15 MR. MORIN: Yes, sir.

16 Q -- would that have been incorrect?

17 THE COURT: Just a minute, sir.

18 MR. MORIN: He is leading.

19 THE COURT: Sustain the objection.

20 Q Is there anything in this statement that you made on
21 September the 16th that as you read it this morning is
22 incorrect?

23 A Yes, sir.

24 Q I want you to tell the ladies and gentlemen of the jury
25 and the Court what it is in that statement that is

Terry Hadden
Direct examination by Mr. Gowdy

1 incorrect.

2 A Right here where it has got, right here where it has
3 got Mr. Moore saying, "Jamie, get the hell back," I don't
4 remember giving that statement.

5 Q Regardless of whether you remember giving it or not,
6 Mr. Hadden, as you testify this morning, did this defendant
7 say, "Get the hell back"?

8 A No, sir.

9 Q What did you hear this defendant say inside Nikki's
10 Convenience Store on September the 16th, 1999?

11 A He told me not to move. That's all I heard him ever
12 say.

13 Q Okay. Anything else in that statement? And let me ask
14 you. What time did you come on your shift on September the
15 15th?

16 A It would have been at 3:30.

17 Q And you worked until when?

18 A It was twelve o'clock when I got off.

19 Q And then you went where?

20 A I went down to Nikki's.

21 Q And you were there until when?

22 A I usually stayed until around three o'clock.

23 Q I believe you testified previously, Mr. Hadden, you
24 never been shot at before.

25 A No, sir.

Terry Hadden
Direct examination by Mr. Gowdy

1 Q Had you ever seen a dead body before, Mr. Hadden?

2 A No, sir.

3 Q How soon after those two things happened would you have
4 been interviewed by law enforcement?

5 A Probably an hour.

6 Q Were you upset?

7 A Sir, at that time I didn't know what was really going
8 on or nothing.

9 Q Were you upset?

10 A Yes, sir.

11 Q All right. A week or so later, Mr. Hadden, did you sit
12 down with law enforcement again?

13 A Yes, sir.

14 Q Did you provide another statement to them?

15 A Yes, sir.

16 (Voluntary statement of Terry Dean Hadden dated
17 September 24, 1999, marked State's Exhibit Number
18 Thirty-three for Identification.)

19 Q Mr. Hadden, I want you to look at State's Exhibit
20 Thirty-three for identification purposes, a two-page
21 document, and tell me whether or not that is your signature
22 at the bottom of both of those pages.

23 A Yes, sir.

24 Q I want you to read those two pages. And, again, look
25 up at me when you are through reading. Okay?

Terry Hadden
Direct examination by Mr. Gowdy

1 A Okay.

2 (Pause.)

3 Q Is that a statement that you gave to law enforcement?

4 A Yes, sir.

5 Q And what's the date of that statement, Mr. Hadden.

6 A 9/24/99.

7 Q Eight days after the incident?

8 A Yes, sir.

9 Q How many shots did you tell law enforcement you heard
10 in that statement?

11 (Pause.)

12 Q Can you see it? Can you find it?

13 A I am trying to find what you are talking about. Okay.

14 Q Tell the ladies and gentlemen of the jury how many
15 shots you told law enforcement you heard when you gave this
16 interview.

17 A I told law enforcement maybe 14 shots.

18 Q Mr. Hadden, I want you to tell the ladies and gentlemen
19 of the jury. How many shots did you hear on September the
20 16th, 1999, inside of Nikki's Convenience Store?

21 A I could not tell you, sir.

22 Q Well, I don't mean to nitpick with you, Mr. Hadden, but
23 you told law enforcement you heard 14. And I want you to
24 tell the jury how many you heard if you remember how many
25 you heard.

Terry Hadden
Direct examination by Mr. Gowdy

1 A Yes, sir. I was asked how many shots was fired in
2 there. I answered that with I don't know. He told me how
3 many did I think I heard, and I told him what I thought I
4 heard, which I did think I heard a bunch of shots when I was
5 in there. I did not count them.

6 Q Is there any doubt in your mind who fired the first
7 shot?

8 A No, sir.

9 Q Who would that have been?

10 A It would have been Mr. Moore over there.

11 Q Is there any doubt in your mind who the first shot was
12 fired at?

13 A No, sir.

14 Q Who was the first shot fired at?

15 A He fired it at me.

16 Q He being --

17 A Mr. Moore.

18 Q Is there any doubt, Mr. Hadden, that Mr. Moore had
19 Mr. Mahoney, had James, and was holding both of his hands?

20 A No, sir.

21 (Photo lineup marked State's Exhibit Number Eighteen
22 for Identification.)

23 Q Mr. Hadden, when you were being interviewed or talked
24 to by folks from law enforcement, at some point did they
25 show you a series of photographs?

Terry Hadden
Direct examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q And for what purpose did they show you that series of
3 photographs, Mr. Hadden?
- 4 A They wanted to see if I could identify Mr. Moore.
- 5 Q Did they suggest to you who you were supposed to pick
6 out of that lineup?
- 7 A No, sir.
- 8 Q How long did it take you to realize whether or not the
9 person's picture was in the photo lineup?
- 10 A Probably a second.
- 11 Q Let me show you what has been marked for identification
12 purposes as State's Eighteen and ask you whether or not you
13 recognize that.
- 14 A Yes, sir.
- 15 Q Is your signature on State's Eighteen, on the front?
- 16 A Yes, sir.
- 17 Q Were you asked to affix your signature or sign
18 underneath the picture of the person that you thought was in
19 the store?
- 20 A Yes, sir.
- 21 Q Is that what you did?
- 22 A Yes, sir.
- 23 MR. GOWDY: Your Honor, we would move State's Eighteen
24 into evidence.
- 25 MR. MORIN: No objection.

Terry Hadden
Direct examination by Mr. Gowdy

1 THE COURT: Without objection, State's Number Eighteen
2 will be admitted.

3 (Photo lineup marked State's Exhibit Number Eighteen.)

4 THE COURT: Is the envelope to come in too, gentlemen?

5 MR. GOWDY: Your Honor, the envelope had information on
6 it that I didn't --

7 THE COURT: Okay.

8 MR. GOWDY: I wasn't sure was pertinent to the case.
9 Thank you, Your Honor.

10 (Lineup only was marked.)

11 Q Mr. Hadden, had you seen this defendant in Nikki's
12 Speedy Mart before 3:00 a.m. on September the 16th, 1999?

13 A No, sir.

14 Q Is this the defendant that pointed the gun at you --

15 A Yes, sir.

16 Q -- and fired a shot at you?

17 A Yes, sir.

18 Q Is Nikki's Speedy Mart still where it used to be?

19 A They reopened it. No, sir. Nikki's moved up the road,
20 probably 75 yards from the old building.

21 Q Do you still go in there as much as you used to?

22 A No, sir.

23 MR. GOWDY: Your Honor, I don't have any more questions
24 for Mr. Hadden.

25 Q Please answer any questions that Mr. Morin or the Court

Terry Hadden
Cross-examination by Mr. Morin

1 may have for you, Mr. Hadden.

2 THE COURT: Cross-examination, Mr. Morin.

3 CROSS-EXAMINATION

4 BY MR. MORIN

5 Q Mr. Hadden, I know you stated you worked from 9:00 till
6 midnight that night, is that right?

7 A No, sir. I said 3:30 till midnight.

8 Q 3:30. Nine hours, right? Okay.

9 A Eight hours.

10 Q Well, you had an hour for lunch or dinner.

11 A That's why we come in half an hour earlier.

12 Q Okay. And what time did you get up that day,
13 Mr. Hadden?

14 A Around nine o'clock.

15 Q In the morning?

16 A Yes, sir.

17 Q Okay. And then you went in at 3:30.

18 A Yes, sir.

19 Q Tell me about your job there, what you do.

20 A Well, I work in the warehouse. We load trucks with
21 potato chips.

22 Q Okay. Have you got a lot of walking involved in that?

23 A There's a lots of walking and a lots of riding.

24 Q You have got to move pretty quick, don't you?

25 A Yes, sir.

Terry Hadden
Cross-examination by Mr. Morin

- 1 Q They get mad if you don't move enough, don't they?
- 2 A You don't have a job.
- 3 Q Okay. Now, you got to Nikki's about what time?
- 4 A Around 15 after 12:00.
- 5 Q Okay. And Mr. Moore came in the store about 15 after
- 6 3:00.
- 7 A I don't know what time he came in the store.
- 8 Q Okay. I think you told Mr. Gowdy that about 1:00 or
- 9 1:15 it got busy.
- 10 A Yes, sir.
- 11 Q And you were playing the video poker at that time.
- 12 A Yes, sir.
- 13 Q What game were you playing?
- 14 A Poker joker; joker poker rather.
- 15 Q All right. Tell me how you play that game.
- 16 A It's ace high, what it amounts to, just like regular
- 17 poker.
- 18 Q Well, I'm not too familiar with cards.
- 19 A Well, if you ever played poker, it just goes with what
- 20 you pair, what you've got to pair up, pair three,
- 21 three-three's. That's where you win.
- 22 Q Okay. And you were at that machine. Did you stay at
- 23 the same machine the whole time?
- 24 A Yes, sir.
- 25 Q Why did you do that?

Terry Hadden
Cross-examination by Mr. Morin

1 A I had been hitting it, and I was just sitting there
2 shooting it.

3 Q Okay. And you were there for about two hours.

4 A Yes, sir.

5 Q Does this machine make noise?

6 A Only when you hit.

7 Q Only when you hit.

8 Now, you called the police after Mr. Moore left.

9 A Yes, sir.

10 Q And a county police officer arrived.

11 A Yes, sir. The county police was the first ones on the
12 scene.

13 Q Do you remember telling that officer that Mr. Moore
14 came in, walked up to the counter and said get your, get
15 your damn hands up?

16 A No, sir. I did not say that.

17 Q Now, you've got a statement that Mr. Gowdy showed you.
18 I'm going to -- okay. Let me show you what's been marked
19 for identification, I believe, as Number Thirty-two.

20 Now, this statement that I'm showing you now, down at
21 the bottom after it says, "end of statement," it says
22 prepared by Detective T. E. Brown, is that right?

23 A Yes, sir.

24 Q Okay. So this officer down here as witness, it says
25 Tony E. Brown. Is that the gentleman that wrote that

Terry Hadden
Cross-examination by Mr. Morin

1 statement for you?

2 A Sir, I do not know who wrote that.

3 Q Did you write this statement yourself?

4 A I do not know his name.

5 Q No. I am saying it was another officer who wrote it
6 for you.

7 A Yes, sir.

8 Q Okay. Anywhere in that statement, anywhere, did you
9 tell this officer about Mr. Moore holding James' hands down?

10 A No, sir.

11 Q And the officer who you said that you talked to -- you
12 talked to an officer right there at Nikki's, right, and told
13 them what you saw happen?

14 A I think there was a detective there. I ain't sure.

15 Q Okay. Did you tell that person anything about holding,
16 a hand being held down?

17 A No, sir.

18 Q All right. Now, down here at the bottom, Mr. Gowdy
19 asked you if that was your signature, is that right?

20 A Yes, sir.

21 Q All right. And I don't mean to offend you, sir, but
22 can you read?

23 A What do you want me to read?

24 Q Okay. I just want you to read right here where it
25 says, "I have read." If you would, read that out loud for

Terry Hadden
Cross-examination by Mr. Morin

1 us.

2 A "I have read this statement considering -- consisting
3 of one page, and I clarify that the facts contained there
4 are three (sic) and correct. I further certify I made no
5 request for the advice or premisense (sic) of a lawyer for
6 or during part of this statement, nor at any time before it
7 was finished did I request that this statement be stopped.
8 I also decide, declare, that I was not told or promised what
9 to say in this statement."

10 Q Okay. Did you read that that night?

11 A No, sir.

12 Q Okay.

13 MR. GOWDY: Your Honor, I don't have any objection to
14 Mr. Moore, Morin, moving the statement into evidence. He's
15 published part of it under the rule of completeness. If he
16 wants to publish the whole thing to the jury, I don't have
17 any objection to that.

18 MR. MORIN: I don't know that I was planning to, Your
19 Honor.

20 THE COURT: We will leave that up to you, Solicitor.

21 Q So, in other words, you signed it, but you didn't read
22 the whole document.

23 A No, sir.

24 Q Okay. And what was -- excuse me. I should have left
25 that there. This is also, it says the statement was

Terry Hadden
Cross-examination by Mr. Morin

1 completed at 6:10 a.m., which is --

2 A Yes, sir.

3 Q -- about three hours after this happened.

4 A Yes, sir.

5 Q Okay. Now, as you stated, you then came back a few
6 days later.

7 A I was called to come back and go over my statement,
8 sir.

9 Q Uh-huh. Let me ask you about the tire iron for a
10 minute. When the officer, county officer, got to the -- the
11 first one you spoke to there at the scene, did you tell him
12 about that other fellow coming in with the tire iron?

13 A Sir, when the first police officer pulled up, I didn't
14 tell them nothing but that there had been a shooting.
15 That's all I said to them.

16 Q Okay. Now, I am going to show you show you what's been
17 marked as State's Exhibit Number Thirty-three for I. D.
18 purposes. This is your second statement. Did you write
19 this one yourself?

20 A No, sir.

21 Q You didn't write that one either?

22 A No, sir.

23 Q Did you read it before you signed it?

24 A No, sir. When I went up there to read over the first
25 statement, I said, I seen things in there I did not say.

Terry Hadden
Cross-examination by Mr. Morin

1 So, I told him. I gave him this statement as what I saw.

2 Q Okay. And is there anywhere in that statement -- and
3 that's about six or eight days after this happened.

4 A Yes, sir.

5 Q Is there anything in that statement where you said
6 anything about seeing Mr. Moore holding Jamie's hand?

7 A No, sir.

8 Q Okay. How much, how much money did you spend, if you
9 recall, on that video poker game?

10 MR. GOWDY: Objection, relevance.

11 THE COURT: Sustain the objection.

12 Q Your testimony today is that you remember seeing this
13 Mr. Moore's hand on Jamie's.

14 A Yes, sir.

15 Q When did you remember that?

16 A Sir, I thought it was in this statement that I gave
17 earlier.

18 Q So you thought it was in the first statement.

19 A Yes, sir.

20 Q But then you came back later and added some things in
21 the second statement.

22 A Sir, have you ever been shot at?

23 THE COURT: No, sir. He is the one asking the
24 questions.

25 A No, sir.

Terry Hadden
Cross-examination by Mr. Morin

- 1 Q Is this -- is your recollection -- or when was the
2 first time that you informed a police officer or a solicitor
3 that you recall having your, having this hand held down?
4 A I thought I told that in my first, second, statement.
5 I thought it was already in there, sir.
6 Q I understand that. But it wasn't, was it?
7 A No, sir.
8 Q All right. So, then you did tell them that at some
9 point?
10 A I went to the solicitor's office.
11 Q Uh-huh.
12 A Yes, sir. I did tell them that.
13 Q Okay.
14 A But I thought it was already in the statement.
15 Q I see. Did you tell them up in their office when you
16 sat down to talk to him?
17 A Yes, sir.
18 Q Okay.
19 MR. MORIN: One moment, Your Honor.
20 THE COURT: Yes, sir.
21 (Pause.)
22 Q Mr. Hadden, do you recognize this gentleman right here?
23 THE COURT: Stand up, please, sir.
24 (Whereupon, Officer Steve Denton stood.)
25 A He could be the detective for all I know.

Terry Hadden
Cross-examination by Mr. Morin

1 Q Okay.

2 A No, sir, I don't recognize him.

3 Q Okay. Thank you.

4 Just so I am clear on this, Mr. Hadden, there was a
5 county man who you just briefly spoke to there at the store.

6 A Yes, sir.

7 Q And then when you got -- after they took you to the
8 police station, there was another officer who wrote a
9 statement for you.

10 A I believe so, sir.

11 Q Okay. And then after that a few days later you came
12 back and wrote another statement for a different officer.

13 A No, sir. They called me and wanted me to go over my
14 statement that I gave the first time.

15 Q Okay. So you went back.

16 A As he was going over the statement and reading it to
17 me, I told him I did not say that.

18 Q And that was a different officer, or was that the same
19 officer?

20 A I have no idea, sir.

21 Q Okay. And then after that when you say you told the
22 solicitors about Mr. Moore having his hand on Jamie's, you
23 told them that when you came up to their office.

24 A Yes, sir. As I told you, I thought it was in my
25 statement to start with.

Terry Hadden
Cross-examination by Mr. Morin

- 1 Q I understand. And about what time? When was that that
2 you told the solicitors about the hand, that part?
- 3 A That there was the first time I talked to them.
- 4 Q Which was when?
- 5 A I have no idea what date or day that was, sir.
- 6 Q I'm not asking for specifics, specific time or date.
7 Was it in the last few weeks, the last few months?
- 8 A Two months.
- 9 Q Okay. Is this the first time that you have been asked
10 these questions in the courtroom?
- 11 A No, sir.
- 12 Q When else were you asked these questions?
- 13 A Last week.
- 14 Q By who?
- 15 A The solicitor.
- 16 Q Which ones?
- 17 A Right there.
- 18 Q Mr. Gowdy?
- 19 A Yes, sir.
- 20 Q Mr. Barnette?
- 21 A Yes, sir.
- 22 Q They asked you these questions?
- 23 A They went over my statement.
- 24 Q Uh-huh.
- 25 MR. MORIN: That's all I have of this witness.

Terry Hadden
Redirect examination by Mr. Gowdy

1 MR. GOWDY: Your Honor, could Mr. Morin and I approach
2 before redirect?

3 THE COURT: Yes, sir.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 REDIRECT EXAMINATION

7 BY MR. GOWDY

8 Q Mr. Hadden, when Deputy Solicitor Barnette, Deputy
9 Willingham and I met with you either in my office or in the
10 courtroom to acclimate you to what it was like to testify,
11 did we ever suggest an answer to you?

12 A No, sir.

13 Q Have we ever told you what to say in court?

14 A No, sir.

15 Q Now, regardless of whether or not you put it in your
16 statement, did you see this man's hands on James Mahoney's
17 hands on September the 16th, 1999?

18 A Yes, sir.

19 Q Is there any doubt about that in your mind?

20 A No, sir.

21 MR. GOWDY: I don't have anything else on redirect,
22 Your Honor.

23 THE COURT: Recross.

24 RECROSS-EXAMINATION

25 BY MR. MORIN

Terry Hadden
Recross-examination by Mr. Morin

1 Q Is it my understanding that you are saying that you
2 practiced this testimony?

3 A No, sir.

4 Q You sat in the courtroom.

5 A Sir?

6 Q You sat in the courtroom.

7 A Yes, sir.

8 Q Mr. Gowdy asked you these questions.

9 A No. He went over my statement, sir.

10 Q How about Mr. Barnette? Did he ask you any questions?

11 A Yes, sir.

12 MR. MORIN: That's all I have.

13 THE COURT: Thank you, sir. You may step down.

14 Ladies and gentlemen of the jury, we are going to take
15 a short break at this point in time.

16 As I send you to the jury room, let me remind you that
17 you are not to discuss this case among yourselves. We'll
18 get you back in just a few minutes.

19 The jury may retire. Everyone else remain seated while
20 they exit the courtroom, please.

21 Mr. Bailiff, how about making sure that that chair is
22 out of the way so these ladies and gentlemen can get out.
23 Well, let's let them out and then you can take it out and
24 let the other row out.

25 (The following takes place outside the presence of the

Terry Hadden
Recross-examination by Mr. Morin

1 jury.)

2 THE COURT: Ten minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Is the state ready to continue?

5 MR. GOWDY: Yes, sir, Your Honor.

6 THE COURT: Is the defendant ready?

7 MR. MORIN: Yes, sir.

8 THE COURT: Let's bring our jury back, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Mr. Bailiffs, we are trying to keep the
12 jury down at that end so they can see the exhibits. So,
13 they are going to be seated in the proper way. That is
14 going to be that way throughout the course of the trial.
15 So, y'all please get used to that.

16 THE BAILIFF: Yes, sir.

17 THE COURT: All right. Madam Clerk, I think we have
18 another jury custodian to swear.

19 Agent Rogers, come around.

20 (Whereupon, the jury custodian was sworn.)

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, I'm going to introduce Agent Rogers to you now. You
23 will be meeting him throughout the course of this trial. He
24 is added to your detail.

25 And thank you very much, Jim.

Bobby Rollins
Direct examination by Mr. Gowdy

1 All right. Solicitor, call your next witness.

2 MR. GOWDY: Your Honor, may it please the Court, the
3 state would call officer Bobby Rollins, Deputy Bobby
4 Rollins. Excuse me.

5 BOBBY ROLLINS, having been first
6 duly sworn, testified as follows:

7 THE COURT: Please state your name for the record, and
8 spell your last name, sir.

9 THE WITNESS: Bobby Maurice Rollins, R-O-L-L-I-N-S.

10 THE COURT: Solicitor.

11 MR. GOWDY: Thank you, Your Honor. May it please the
12 Court.

13 DIRECT EXAMINATION BY MR. GOWDY

14 Q Good morning, Deputy Rollins.

15 A Thank you, sir.

16 Q I'm going to get you to speak up where the last two
17 ladies in the jury box can hear you good. Okay?

18 A Okay.

19 Q You're going to almost feel like you're yelling at me,
20 but that's okay. All right?

21 A Okay.

22 Q Tell the ladies and gentlemen of the jury where you
23 work.

24 A Spartanburg County Sheriff's Office assigned to uniform
25 patrol division.

Bobby Rollins
Direct examination by Mr. Gowdy

- 1 Q How long have you been with the sheriff's department?
- 2 A Five years.
- 3 Q All of it has been in uniform patrol?
- 4 A Yes, sir.
- 5 Q Tell this jury some of the duties and responsibilities
6 of a uniform patrol officer.
- 7 A Well, we basically handle everything from 9-1-1 calls,
8 traffic complaints, to serving warrants. You name it, we do
9 it. First responders, basically.
- 10 Q I'm going to ask you still to talk just a little
11 louder. Act like you are talking to this bailiff right
12 here.
- 13 A Okay.
- 14 Q And I think you testified, Deputy, that all five of
15 your years have been spent in uniform patrol.
- 16 A Yes, sir, that's correct.
- 17 Q Back in 1999, Deputy Rollins, what shift were you
18 assigned to?
- 19 A Every third week I was assigned to the delta shift,
20 that consists of 7 p. (sic) till 3:00 a.m. in the morning.
- 21 Q So you got off at three o'clock in the morning.
- 22 A Some. If I'm lucky. Some nights --
- 23 Q And you are supposed to get off at three o'clock.
- 24 A Yes, sir. I was supposed to.
- 25 Q Okay. Let's go back to September the 16th, 1999. Did

Bobby Rollins
Direct examination by Mr. Gowdy

1 you begin an investigation in the Hillside Drive area of
2 Spartanburg County?

3 A Yes, sir.

4 Q Tell the ladies and gentlemen of the jury, without
5 telling us what anybody else said to you, tell us how you
6 came to be in the Hillside Drive area.

7 A I was dispatched on that call basically to be in the
8 area for a recent robbery.

9 Q Did you have a description of what you were looking
10 for, Deputy Rollins?

11 A Not over the radio at that time.

12 Q Did you get a description of what you were looking for?

13 A Yes, sir, when I pulled up about four minutes after it
14 happened.

15 Q Pulled up where?

16 A At the Nikki's Speedy Mart, on California Avenue and
17 221.

18 Q And, again, for purposes of jurisdiction, that is in
19 Spartanburg County.

20 A Yes, sir, it is Spartanburg County, Whitney Community.

21 Q And who did you talk to when you pulled up in front of
22 Nikki's, Deputy?

23 A Sergeant Dale Blanton exited the business and come up
24 to me and started giving me the information that she
25 obtained inside.

Bobby Rollins
Direct examination by Mr. Gowdy

1 Q Based on the information that she gave to you, Deputy,
2 what did you do?

3 A I left that area in hopes to locate a suspect that was
4 involved in this incident.

5 Q Were you looking for anything distinctive? Did you
6 have a description of a vehicle or person or anything else
7 to help you look?

8 A We had -- basically, she come outside and explained
9 that the victim was deceased; that according to the witness
10 in there I needed to be looking --

11 MR. MORIN: Your Honor, objection. Hearsay.

12 THE COURT: Sustain the objection.

13 Q Were you looking for any type of vehicle or were you
14 looking for a description of a person? Tell me what you
15 were looking for.

16 A I was looking for basically a black male, possibly
17 injured, driving a loud vehicle.

18 Q All right. And where did you go to look for that
19 description?

20 A I proceeded northbound on Highway 221 probably about a
21 mile and a half up the road. I took a right on Hillside
22 Drive in hopes to see if anybody was walking around, could
23 have seen a car passing through there flying or anything
24 like that that could give me any information.

25 Q All right. What did you do when you turned on

Bobby Rollins
Direct examination by Mr. Gowdy

1 Hillside?

2 A When I turned on Hillside Drive, I basically was doing
3 about five miles per hour, somewhere around about that,
4 using a patrol-car spotlight to check left to right of me
5 while I was going up the road.

6 And I got around 133 Hillside Drive. I had my window
7 down. I heard a bang come from the left side of my car, in
8 that general area.

9 It happened so quickly, when I turned back around, all
10 I seen was looked like a truck with no lights on had hit,
11 appearing to me to be a telephone pole.

12 I then did like a quick three-point turn and exited my
13 vehicle and threw all of my light in that general area,
14 because at that time I didn't know what I had over in that
15 area.

16 From that area a subject sitting right there come from
17 the back of the pick-up truck, no shirt on, threw his hands
18 up, bleeding profusely from the left arm.

19 At that time I then drew my weapon on him and started
20 giving him verbal commands. These commands are based --

21 Q Let me stop you right there, Deputy.

22 A Yes, sir.

23 Q Verbal commands is kind of police talk. What, what,
24 what did you tell him to do?

25 A Basically, for my safety, was to get on the ground and

Bobby Rollins
Direct examination by Mr. Gowdy

1 keep his palms up in the air while he was laying face down
2 on the ground on the roadway.

3 Q Did he comply with your directions or orders?

4 A Yes, sir. He was already doing that while I was saying
5 it.

6 Q Did he say anything to you, Deputy Rollins?

7 A Yes, sir. The whole time he was shouting, "I did it, I
8 did it, I give up, I give up."

9 Q He was saying what?

10 A "I did it, I did it, I give up, I give up."

11 Q "I did it, I did it, I give up, I give up." How many
12 times did he say that, Deputy?

13 A I couldn't recall. I know it was a bunch. It was
14 enough to me to -- basically, I advised him one time to
15 actually be quiet, because I didn't know if I had somebody
16 come up behind me or what at that time. I didn't know if he
17 was trying to strike me.

18 Q Did you happen to notice what kind of vehicle this
19 person was in?

20 A Yes, sir.

21 Q What kind was it?

22 A Looked like a, I believe, a blue and white Chevy
23 pick-up truck, older model.

24 Q Did you have occasion to look inside the truck?

25 A Yes, sir. After I called for backup and he was cuffed,

Bobby Rollins
Direct examination by Mr. Gowdy

1 I then cleared the truck with still my gun out, and I looked
2 inside the vehicle then.

3 Q Can you tell the ladies and gentlemen of the jury what
4 you saw when you looked inside the truck?

5 A Well, when I looked in through the passenger window, I
6 seen a large amount of money piled on the passenger seat
7 saturated in blood.

8 Q Now, the Spartanburg County Sheriff's Department, do
9 different deputies have different responsibilities?

10 A Yes, sir.

11 Q Because you came upon the truck, would you also be the
12 person to go inside the truck and collect all of the
13 evidence and inventory everything?

14 A No, sir.

15 Q Did you do anything other than to look inside the
16 truck?

17 A No, sir.

18 Q Did you notice any blood inside the truck, Deputy
19 Rollins?

20 A Yes, sir. It was smeared throughout the truck. The --
21 a lot of it was on top of the money, like I stated, on the
22 passenger seat right there piled up.

23 Q And when I think of a truck, Deputy, I think of a bench
24 seat. Is that right?

25 A Yes, sir.

Bobby Rollins
Direct examination by Mr. Gowdy

1 Q And your testimony was the money was piled up on the
2 passenger side of that bench seat.

3 A Yes, sir.

4 Q Do you see the person? Did you wind up placing
5 handcuffs on the person, Deputy Rollins?

6 A No, sir.

7 Q Why not?

8 A Basically, at that time I was the officer handling the
9 scene as far as security-wise. I let a fellow officer do
10 that while I kept the gun drawn on him.

11 Q Do you recognize the person that you saw that night in
12 the courtroom?

13 A Yes, sir.

14 Q Can you point him out to the ladies and gentlemen of
15 the jury?

16 A The gentleman sitting right there with the navy coat on
17 and the striped tie.

18 MR. GOWDY: Let the record reflect that the witness has
19 identified the defendant.

20 Q Deputy Rollins, you testified that Mr. Moore, the
21 defendant, said, "I did it, I did it, I give up, I give up."

22 A Yes, sir.

23 Q Was that in response to any questions that you were
24 asking him?

25 A No, sir. I never asked him anything at that point.

Bobby Rollins
Cross-examination by Mr. Morin

1 Q Do you recall any other deputies that responded to the
2 scene to aid you or to back you up?

3 A Yes, sir. Officer Brazeal.

4 Q Charity Brazeal?

5 A Yes, sir. She was the first one there to handcuff.

6 Q Deputy Rollins, I don't have any further questions for
7 you. Please answer any questions the Court or the defense
8 may have for you.

9 THE COURT: Mr. Morin.

10 MR. MORIN: Thank you, sir.

11 CROSS-EXAMINATION

12 BY MR. MORIN

13 Q Officer Rollins, when you first saw Mr. Moore was he in
14 the vehicle or out of the vehicle?

15 A He was coming from the back of the vehicle, out of the
16 vehicle.

17 Q You say that he was bleeding pretty heavily.

18 A Yes, sir.

19 Q And then Officer Brazeal got there.

20 A Yes, sir.

21 Q And she handcuffed him.

22 A Yes, sir.

23 Q And she went with him to leave for -- did she accompany
24 him somewhere?

25 A Yes, sir. I called an ambulance. She got in the back

Bobby Rollins
Cross-examination by Mr. Morin

1 of the ambulance with him.

2 Q Okay. Did Mr. -- well, Mr. Moore loss consciousness,
3 didn't he?

4 A During the handcuffing, because we had to pull his arm
5 right there.

6 Q I see. Then you secured. You said it was your job to
7 secure the area, is that right?

8 A For forensics, yes, sir.

9 Q Okay. Because you don't want anybody coming in there
10 and doing something or touching anything basically, right,
11 or moving anything?

12 A Yes, sir. Nothing.

13 Q Did you speak to any witnesses out there?

14 A Yes, sir, the gentleman that was in the house after the
15 detective had come up there to the scene.

16 Q The house where the truck was, you spoke to a gentleman
17 there.

18 A Yes, sir.

19 Q Just one person?

20 A I can't remember exactly. I think there was maybe two
21 or three people that was in the house. Nobody was outside
22 though.

23 Q Do you recall their names?

24 A No, sir.

25 Q Did you record them in your report?

Bobby Rollins
Redirect examination by Mr. Gowdy

1 A I didn't do the report, sir.

2 Q Well, you did a statement and listed what had happened.

3 A Yes, sir; yes, sir; I did a statement.

4 Q Do you recall if you wrote down the names of these
5 people in that report?

6 A No, sir, not on that.

7 Q You don't recall, or you didn't do it? I can show it
8 to you if you need it.

9 A I got a copy myself.

10 Q You don't know --

11 A The statement I wrote that night was basically upon
12 Investigator Steve Denton telling me how I run into this
13 subject here.

14 Q Okay.

15 A They handled the rest of that.

16 Q Investigator Denton was there at the scene?

17 A Later on.

18 Q Okay. And you told him about these people that were in
19 the house.

20 A Yes, sir.

21 MR. MORIN: That's all I have of this witness.

22 MR. GOWDY: Just very, very quickly, Your Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. GOWDY

Bobby Rollins
Redirect examination by Mr. Gowdy

1 Q Explain to the jury. You are a, a uniform patrol
2 deputy.

3 A Yes, sir.

4 Q Are there other divisions within a sheriff's department
5 or sheriff's office that have other responsibilities?

6 A Several.

7 Q Steve Denton sitting back two rows back, what is he?

8 A A homicide investigator.

9 Q Would you turn over certain investigations to him --

10 A Yes, sir.

11 Q -- and, and leave it to, to him to question people?

12 A Absolutely.

13 Q Thank you.

14 MR. GOWDY: Your Honor, I don't have anything else from
15 Deputy Rollins.

16 THE COURT: Recross?

17 MR. MORIN: No, sir.

18 THE COURT: Thank you, sir. You may step down.

19 MR. BARNETTE: Your Honor, the state would like to call
20 George Gibson as the next witness.

21 GEORGE GIBSON, having been first
22 duly sworn, testified as follows:

23 THE COURT: Please state your name for the record, and
24 spell your last name, sir.

25 THE WITNESS: George Gibson, G-I-B-S-O-N.

George Gibson
Direct examination by Mr. Barnette

1 THE COURT: All right, sir.

2 DIRECT EXAMINATION BY MR. BARNETTE

3 Q Mr. Gibson, if you would, continue to talk loud so
4 everybody in the whole room can hear you, even in the back
5 row.

6 Okay. Mr. Gibson, do you live here in Spartanburg?

7 A Yes, sir.

8 Q And back on September the 16th, 1999, where did you
9 live at in Spartanburg?

10 A On Hillside Drive in Whitney.

11 Q And earlier that night did you meet a gentleman that
12 you knew as Mo?

13 A Yes.

14 Q Did you see Mo in the courtroom here today?

15 A Yes, sir.

16 Q Can you identify him for us here in the courtroom?

17 A He is sitting there with the blue, navy blue, sports
18 coat on.

19 Q Okay. Is he the black gentleman or the white
20 gentleman?

21 A The black gentleman.

22 MR. BARNETTE: The record will reflect that he has
23 identified the defendant.

24 Q How many times did this gentleman come to your house
25 that day?

George Gibson
Direct examination by Mr. Barnette

1 MR. MORIN: Your Honor, at this time I would like to
2 renew my objection.

3 THE COURT: The objection is noted, and it's overruled
4 consistent with the Court's prior ruling.

5 MR. BARNETTE: Thank you, Your Honor.

6 Q Mr. Gibson, if you would, how many times did you see Mo
7 that night or early morning?

8 A Twice.

9 Q Okay. The first time he saw you, when was that?

10 A Well, between, I guess, between 8:00 and 10:00, 8:00
11 and 10:00.

12 Q Was that the night before?

13 A Yes, sir.

14 Q Remember to talk up so we can hear you.

15 A Okay. All right.

16 Q And when he came to your house, what did he say to you?
17 What did he want?

18 A He came. He wanted me to get him something, some
19 cocaine.

20 Q Okay. He wanted to get some cocaine. Is that crack
21 cocaine?

22 A Yes, sir.

23 Q And did you go get him some crack cocaine?

24 A No.

25 Q Why didn't you?

George Gibson
Direct examination by Mr. Barnette

- 1 A Because he didn't have any money.
- 2 Q Okay. So did he say anything to you before he left?
- 3 A Yes. He was going. He said he was going to work, that
- 4 he would see me the next day.
- 5 Q Did you see him a second time, the next morning?
- 6 A Yes.
- 7 Q Okay. Can you tell the Court, I mean the Court and the
- 8 jury, about the second time he came to your house? What did
- 9 he say to you or what happened?
- 10 A Well, I heard a, a, a truck pull in the yard and blew
- 11 the horn and was calling for me to come outside. And I was
- 12 asleep, so, you know, it was over about three o'clock. So,
- 13 I didn't go out, and then, you know, said, "Come out to the
- 14 car, I need to talk to you." And I didn't go out. So, he
- 15 knocked on the door. And a roommate of mine let him in. I
- 16 mean, came to the door to get me. He didn't let him in.
- 17 And I went to the door. He said he wanted me to do
- 18 something for him and --
- 19 Q What did he want you to do for him?
- 20 A To get him something.
- 21 Q And by get him something, what did he want you to get?
- 22 A The same thing, the cocaine, I guess, same thing.
- 23 Q Uh-huh.
- 24 A And --
- 25 Q And was that crack cocaine?

George Gibson
Direct examination by Mr. Barnette

1 A Yes.

2 Q And what happened next?

3 A He said, "I done something bad, and I got to go turn
4 myself in, and I got money." I said yeah. At that time I
5 saw he was hurt. He was bleeding. I said, "What happened?"
6 He said, "I been shot." He said, "I got to go to the
7 emergency room and I need for you to do this for me." I
8 said, "Man, you need to go to the emergency room." He said,
9 "Come and take me." I said, "Well, no. You can make it
10 yourself, you know." He said, "Okay."

11 And, so, he left and got in his truck and was backing
12 out the yard, and he backed into a post. And at that time a
13 county car was coming up, you know, went by the driveway,
14 and it stopped. I guess because he heard the impact. And
15 he got out of his truck. And he said, "I give myself up,"
16 and went out and laid in the street, you know, until the
17 officer come back and got him.

18 Q How many hours was it between the first time he came to
19 your house and the second time he came to your house, do you
20 know or remember?

21 A About, had to be about, five hours, four or five hours
22 at least, about five.

23 Q Okay.

24 MR. BARNETTE: Let me have this marked for I. D.
25 purposes, Your Honor.

George Gibson
Direct examination by Mr. Barnette

1 THE COURT: Yes, sir.

2 (Photograph marked State's Exhibit Number Twenty-three
3 for Identification; photograph marked State's Exhibit Number
4 Twenty-four for Identification.)

5 Q Mr. Gibson, I am going to show you two pictures. These
6 have been marked as State's Exhibits Twenty-three and
7 Twenty-four. State's Exhibit Number Twenty-four, do you
8 recognize that picture?

9 A Yes. That's where I stay.

10 Q That's where you stay at.

11 A Yeah.

12 Q And does this picture, does it accurately depict the
13 way your house looked that day?

14 A Yes. That truck in the back, yeah, that's my sign
15 truck.

16 MR. BARNETTE: Your Honor, I would like to enter
17 State's Exhibit Number Twenty-four into evidence at this
18 time.

19 THE COURT: Any objection?

20 MR. MORIN: That's the house?

21 MR. BARNETTE: That's the house, yes.

22 MR. MORIN: No. No objection.

23 THE COURT: Without objection, it will be admitted.

24 (Photograph marked State's Exhibit Number Twenty-four.)

25 Q And I'm going to show you State's Exhibit Number

George Gibson
Direct examination by Mr. Barnette

1 Twenty-three that has been marked for I. D. purposes. Is
2 that the truck that Mo was driving or Mr. Moore was driving
3 that day?

4 A Yes, yes.

5 Q And does that picture fairly represent the way that
6 truck looked that day?

7 A That's in the yard, right.

8 Q I don't know --

9 A That's it, that's it. That's exactly the way it is.
10 He backed into the post right there. That's where --

11 Q And so that was the post that he backed into.

12 A Yes, uh-huh.

13 MR. BARNETTE: Your Honor, I would like to enter this
14 into evidence at this time.

15 THE COURT: Without objection?

16 MR. MORIN: No, sir. No objection.

17 THE COURT: Without objection, it will be admitted.

18 (Photograph marked State's Exhibit Number
19 Twenty-three.)

20 Q Mr. Gibson, you gave a statement to the police on
21 September the 16th, is that correct?

22 A Yes, sir.

23 Q And in that statement, the first time he came to your
24 house was not mentioned in that statement, is that correct?

25 A No. It wasn't.

George Gibson
Direct examination by Mr. Barnette

1 Q And why didn't you mention that in your statement to
2 the police that day?

3 A Because I was just scared to get involved, you know. I
4 didn't connect that to him by, you know, the person, you
5 know, coming by there. I didn't -- I was scared to say
6 anything like that, you know, because I didn't want to get
7 it, yes, sir.

8 Q And understanding that now, you have a pending
9 trafficking in cocaine charge, is that correct --

10 A Yes.

11 Q -- in Spartanburg County?

12 A Yes, sir.

13 Q Has the solicitor's office or any law enforcement or
14 anybody promised you anything concerning those charges?

15 A None whatsoever.

16 Q Are you testifying to the truth today, what you --

17 THE COURT: No, sir.

18 MR. BARNETTE: I'm sorry.

19 THE COURT: I don't think that that's a proper
20 question. I'm going to ask the jury to disregard that, and
21 it is to be stricken from the record.

22 Q And you are testifying to the truth.

23 MR. MORIN: Your Honor --

24 Q Let me rephrase that. Let me move on.

25 What was testified to is what you remember from that

George Gibson
Direct examination by Mr. Barnette

1 night, is that correct?

2 A Yes, sir.

3 MR. BARNETTE: One moment, Your Honor, please.

4 THE COURT: Yes, sir.

5 (Pause.)

6 Q Mr. Gibson, just one or two more questions.

7 Concerning the first time that Mo came to your
8 residence, or Mr. Moore --

9 A Yes, sir.

10 Q -- did he have any money?

11 A No. He said he didn't have any money, and, so, you
12 know, he asked me. And I said, you know, I couldn't do
13 nothing.

14 Q What did he want you to do with it?

15 A If I could get it on my face, get it; but, you know, I
16 couldn't do that either.

17 Q Can you explain to the jury what you mean by "on your
18 face"?

19 A Get it on credit for him through me.

20 Q Thank you. Please answer any questions Mr. Morin or
21 Mr. Kelly or the judge may have for you.

22 MR. BARNETTE: Your Honor, may I publish these to the
23 jury at this time?

24 THE COURT: Yes, sir.

25 All right, Mr. Morin.

George Gibson
Cross-examination by Mr. Morin

1 MR. MORIN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MORIN

4 Q Mr. Gibson, that night at your house, how many people
5 were there?

6 A Four altogether, I think, four.

7 Q Could you name them for me, sir?

8 A Sir, four?

9 Q Yeah. Tell me who they were.

10 A Steve, Casey and Dollar.

11 Q And yourself?

12 A Yeah, myself.

13 Q Okay. Now, the night that this happened you went down
14 to the police station, is that right?

15 A That morning, yes, after, you know.

16 Q You gave a statement to the police.

17 A Yes.

18 Q Didn't say anything about the drugs, did you? If you
19 need to see a copy of it, I can give it to you.

20 A I know. Uh-huh.

21 Q You didn't say anything about it. Didn't say anything
22 about Steve or Dollar or the other gentleman, did you?

23 A No.

24 Q You had crack in the house that night, didn't you?

25 A No.

George Gibson
Cross-examination by Mr. Morin

- 1 Q You told the jury that he wanted to give you --
- 2 A I said get, wanted me to get something for him.
- 3 Q Okay.
- 4 A That's why.
- 5 Q So there wasn't any reason for you to leave that part
- 6 out then, was there?
- 7 A At the time I wasn't thinking about it like that,
- 8 because this, you know, this man was bleeding. I was
- 9 concerned about it. I wasn't thinking about it like that.
- 10 Q Well, yeah. I understand.
- 11 A Okay.
- 12 Q Now, this part that you now say that you remember
- 13 that's not in your statement about the drugs, when did you
- 14 first tell police or the solicitors about that?
- 15 A About --
- 16 Q About this drugs and him wanting to get it on the
- 17 credit and that kind of stuff. Do you remember when you
- 18 first told them about that?
- 19 A A month ago.
- 20 Q A month ago?
- 21 A September, I guess.
- 22 Q Two years after this happened, is that right?
- 23 A Well.
- 24 Q September of 2001 -- 1999?
- 25 A Yeah, yeah, whatever.

George Gibson
Cross-examination by Mr. Morin

- 1 Q Okay. And you have a pending trafficking drug charge,
2 is that right?
- 3 A Yeah, yeah, uh-huh.
- 4 Q And when did you get arrested for that?
- 5 A March. I don't know. March of 2000 or something.
- 6 Q And 2000, this year, or --
- 7 A 2000.
- 8 Q Oh, I see. And nothing has happened with that case
9 yet.
- 10 A Not, no, not as far as I know, haven't.
- 11 Q Okay. So it is about 18 months old.
- 12 A I guess.
- 13 Q The police got there that night. You say that you saw
14 Mr. Moore in the street, is that right?
- 15 A Saw what?
- 16 Q Let's go back. You saw Mr. Moore. You say you saw Mr.
17 Moore get in his truck, right? After Mr. Moore came to your
18 door and you refused to help him --
- 19 A I was standing in the door. Yeah. I saw him get in
20 the truck and back out of my yard.
- 21 Q All right. And then what did you see?
- 22 A Then what did I say?
- 23 Q What did you see?
- 24 A He backed into the post.
- 25 Q Uh-huh.

George Gibson
Cross-examination by Mr. Morin

- 1 A A county car was going up the street at that time. He
2 stopped.
- 3 Q Okay.
- 4 A And he backed up. And Mo got out of his truck and
5 walked out in the street and said, "I give myself up."
- 6 Q Got out of the driver's side?
- 7 A Got out of his truck.
- 8 Q All right.
- 9 A I don't know whether he got out of his -- he got out of
10 his truck. Whether the driver's side or that side, he got
11 out of his truck. Okay.
- 12 Q And then where did he go?
- 13 A Out in the street, and laid down in the street and said
14 I give myself up.
- 15 Q Okay. Let me ask you to look at State's Exhibit Number
16 Twenty-three. Is that where his truck came to rest?
- 17 A Right there where it sets, yeah, that's right.
- 18 Q Okay. And if you are standing in front of your house
19 or what was your house, that's what you would have seen.
- 20 A I wasn't in front of my house.
- 21 Q Well, I understand that. But this picture, State's
22 Exhibit Number Twenty-four --
- 23 A I was on the porch. Okay. He backed into the post.
- 24 Q Right.
- 25 A He got out of his truck --

George Gibson
Cross-examination by Mr. Morin

1 Q Right.
2 A -- and walked out in the street --
3 Q Right.
4 A -- and said, "I give myself up."
5 Q Okay.
6 A Okay.
7 Q And you were standing --
8 A On my porch.
9 Q -- in this picture --
10 A Out there in the -- yeah.
11 THE COURT: Just one minute. Both of you cannot talk
12 at the same time.
13 THE WITNESS: Okay. Well --
14 THE COURT: You let him ask the question and then you
15 answer it. And he is not going to talk while you are
16 answering.
17 THE WITNESS: Okay. All right, yeah.
18 A Go ahead.
19 Q Okay. I will ask it. State's Exhibit Number
20 Twenty-four.
21 A Uh-huh.
22 Q That's your porch that you were standing on.
23 A Right.
24 Q Okay. That's all I have. Let me make sure I got that
25 straight.

George Gibson
Cross-examination by Mr. Morin

1 Oh, now, after that incident happened an officer talked
2 to you right there, right then, right? Came to your house
3 or came up to your porch and talked to you in the yard, is
4 that right?

5 A Huh, uh-huh.

6 Q And how about the other three gentlemen -- Dollar and
7 the others?

8 A He didn't question them. He talked to them. They was
9 all in the house, because didn't nobody come outside.
10 Didn't nobody come outside. I didn't come outside until
11 after, you know.

12 I didn't really come outside; I didn't really come
13 outside. The only time when I did come outside, the yard
14 was full of policemen, and I showed them where, you know.
15 They was all around the house. I showed them, you know,
16 where the truck was parked. That's all -- before he backed
17 out of the yard. That was it. And didn't none of them come
18 out. I don't know. To my knowledge, they didn't none of
19 them come out, because I was in the room.

20 And as far as when he came to my door, he said that my
21 screen door was locked when he came, when Mo knocked on the
22 door. So, it was still locked when I talked to him through
23 the door. My screen door was. So, didn't nobody come
24 outside until after that had happened, as far as I know.

25 MR. MORIN: That's all I have of this witness.

George Gibson
Redirect examination by Mr. Barnette

1 THE COURT: Redirect?

2 MR. BARNETTE: Thank you, Your Honor. May it please
3 the Court.

4 REDIRECT EXAMINATION

5 BY MR. BARNETTE

6 Q Mr. Gibson, did you give a written statement the night
7 this happened?

8 A Yes, sir.

9 Q When is the next time you talked to somebody about this
10 case?

11 A About as far as a statement or anything?

12 Q About the case itself, when you talked to somebody
13 about your statement or your --

14 A About three days later. The investigator and the
15 solicitor stopped by and asked me, you know, and, about
16 three or four days later, about two or three days later, I
17 think. In fact, it wasn't long. That was -- you know, it
18 was just a brief statement, a brief moment, you know,
19 stopped by. And then this time. That's it.

20 Q So when was the next time after that you talked to
21 anybody else about that case?

22 A The 25th of December, of September rather.

23 Q When you came and talked to the solicitor?

24 A Yes, sir. That's when I -- yes.

25 Q And the time that you are talking about happened two or

George Gibson
Redirect examination by Mr. Barnette

1 three days afterward, was we any of those three solicitors
2 that was --

3 A Sir?

4 Q Was any of us one of those solicitors that came and
5 talked to you two or three days afterwards?

6 A Really, I'm going to be honest with you. All I
7 remember is Officer -- policeman. He's the one I really
8 saw, you know, because it was hot, and the window was up in
9 the car. That's who I remember talking to. That's the only
10 one that really I could, you know, place his face.

11 But, you know, it was three gentlemen in the car, and
12 they said they were with the solicitor's office. So, you
13 know, that's the only one I recognized at the time.

14 Q Thank you, Mr. Gibson.

15 A Uh-huh.

16 THE COURT: Recross?

17 MR. MORIN: No, sir.

18 THE COURT: Thank you, sir. You may step down.

19 Next witness.

20 MR. GOWDY: May it please the Court, Your Honor, the
21 state would call Jeff Goodwin.

22 JEFF GOODWIN, having been first
23 duly sworn, testified as follows:

24 THE COURT: Please state your name for the record, and
25 spell your last name, sir.

Jeff Goodwin
Direct examination by Mr. Gowdy

1 THE WITNESS: Jeffrey Goodwin, G-O-O-D-W-I-N.

2 DIRECT EXAMINATION BY MR. GOWDY

3 Q Good morning, Mr. Goodwin.

4 A Good morning.

5 Q I'm going to ask you, if you would, to speak up where
6 the last two ladies in the jury box can hear you. Even if
7 you feel like you are yelling at me, that's okay.

8 A Okay.

9 Q I want you to tell the ladies and gentlemen of the jury
10 where you live and where you work.

11 A I live in Taylors, South Carolina. I work for Fennell
12 Container Company, which is a trash service.

13 Q Mr. Goodwin, I want to go back to the early morning
14 hours of September the 16th, just September the 16th, 1999.

15 A Correct.

16 Q Were you in the vicinity of Highway Nine in
17 Spartanburg, South Carolina?

18 A Yes, sir, I was.

19 Q And what's somebody that lives in Taylors doing all the
20 way over on Highway Nine in Spartanburg, South Carolina?

21 A Well, I drive the trash truck that picks up trash in
22 Spartanburg, and I work over here. I'm in Spartanburg every
23 day.

24 Q Did you see something, Mr. Goodwin, that caused you to
25 stop on September the 16th, 1999?

Jeff Goodwin
Direct examination by Mr. Gowdy

1 A Yes, sir, I did.

2 Q Can you tell the ladies and gentlemen of the jury what
3 it was that you saw?

4 A I saw an automatic pistol laying in the turning lane of
5 Highway Nine of the California Avenue.

6 Q And California is -- does it run into 221, Whitney
7 Highway?

8 A No, sir. That's the next, the next block up from 221.

9 Q Okay. Let me show you, Mr. Goodwin, what has been
10 previously marked as State's Exhibit Nineteen and ask you
11 whether or not you recognize that series of three
12 photographs.

13 A Yes, sir. I do.

14 Q What is depicted in those three photographs?

15 A Automatic pistol.

16 Q Would that have been the pistol that you saw in the
17 roadway on September the 16th, 1999?

18 A Yes, sir.

19 MR. GOWDY: Your Honor, we would move State's Exhibit
20 Eighteen, which consists of three pictures, into evidence at
21 this point.

22 MR. MORIN: No objection.

23 THE COURT: Without objection, they are admitted. We
24 need to have them over here, Solicitor.

25 (Three photographs marked State's Exhibit Number

Jeff Goodwin
Direct examination by Mr. Gowdy

1 Nineteen.)

2 Q At what time of the day on the 16th of September did
3 you see this gun?

4 A It was just around daylight.

5 Q And when you saw it, what did you do?

6 A Well, I was driving, getting in the turning lane for,
7 to go onto California Avenue off of Highway Nine, and I saw
8 it right as I went under.

9 The truck that I drive, the windshield is right over
10 the bumper. And I saw it and stopped and backed up. And I
11 saw what it was. And it was laying there with the hammer
12 cocked on it. And I picked up my cell phone and called
13 9-1-1.

14 Q You say the hammer cocked on it. How close did you get
15 to the gun?

16 A Right on top of it.

17 Q Let me show you what has been marked for identification
18 purposes as State's Exhibit Nineteen and ask you whether or
19 not that is the gun that you saw in the roadway.

20 A Yes, sir.

21 Q And is this the hammer back on that gun?

22 A Yes, sir, it is.

23 Q Your Honor, we would move State's Nineteen into
24 evidence.

25 THE COURT: Any objection?

Jeff Goodwin
Direct examination by Mr. Gowdy

1 MR. MORIN: No, sir.

2 THE COURT: Without objection, it will be admitted.

3 (Photograph marked as additional exhibit to State's
4 Exhibit Number Nineteen.)

5 MR. GOWDY: Thank you. Thank you, Your Honor.

6 Q Did you, for lack of a better phrase, stand guard over
7 this gun until the police got there?

8 A Yes, sir. By seeing that gun laying there and the
9 hammer cocked back on it, I was -- there's a danger of it
10 going off.

11 So, I pulled the big truck over it and called 9-1-1 to
12 get the police or somebody there to deal with it for fear of
13 it going off. I felt like I could protect anybody just by
14 the truck being setting over the top of it between the two
15 front wheels.

16 Q And when the police came did they take over the scene
17 at that point?

18 A Yes, sir.

19 Q And you went about your daily business.

20 A That's correct.

21 Q I appreciate your testimony and I appreciate what you
22 did that day.

23 MR. GOWDY: Your Honor, I would ask the Court's
24 permission to publish State's Nineteen to the jury.

25 THE COURT: Yes, sir.

Shane Dedmon
Direct examination by Mr. Willingham

1 Cross-examination.

2 MR. MORIN: No, sir.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Next witness.

6 MR. WILLINGHAM: Your Honor, the state would call Shane
7 Dedmon.

8 MR. GOWDY: Your Honor, we would ask, if there be no
9 objection, that Mr. Goodwin be able to go back to
10 Greenville.

11 THE COURT: Without objection, you are excused. Thank
12 you very much for coming, sir.

13 (Whereupon, the witness was excused.)

14 SHANE DEDMON, having been first
15 duly sworn, testified as follows:

16 THE COURT: State your name for the record, and spell
17 your last name, sir.

18 THE WITNESS: Shane Dedmon, D-E-D-M-O-N.

19 DIRECT EXAMINATION BY MR. WILLINGHAM

20 Q Mr. Dedmon, where do you work?

21 A Spartanburg County Sheriff's Office.

22 Q What do you do for them?

23 A I'm an investigator with the forensics division.

24 Q What does that mean?

25 A Primarily, I work and process crime scenes.

Shane Dedmon

Direct examination by Mr. Willingham

1 Q Okay. How long have you been with the sheriff's
2 office?

3 A Approximately five years.

4 Q How long have you been a forensic investigator?

5 A Four years.

6 Q Okay. So, were you in that capacity as a forensic
7 investigator back on September the 16th of 1999?

8 A Yes.

9 Q Did you receive a call to go retrieve some evidence at
10 a scene on that day?

11 A Yes. I received a call to go to Highway Nine to
12 retrieve some evidence.

13 Q And what was the purpose of going there? What evidence
14 were you to retrieve?

15 A It was a handgun that was laying in the middle of the
16 roadway approximately at Highway Nine and Devon Street.
17 And, let's see. It was a .45 caliber industrial with
18 serial -- with serial number B7874.

19 (One Hafdasa .45 Auto caliber pistol, Model
20 Ballester-Molina, Serial Number B7874 marked State's Exhibit
21 Number Three for Identification.)

22 Q I'm going to show you what's been marked as State's
23 Exhibit Number Three and ask you if you recognize that.

24 A Yes. That's the gun that I -- that I collected from
25 the roadway.

Shane Dedmon
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: Your Honor, at this time I move
2 State's Exhibit Number Three into evidence.

3 THE COURT: No objection? Without objection, it would
4 be admitted.

5 (One Hafdasa .45 Auto caliber pistol, Model
6 Ballester-Molina, Serial Number B7874 marked State's Exhibit
7 Number Three.)

8 Q Mr. Dedmon, what did you do with this gun?

9 A The first thing I did was take photographs of it, and
10 then I took measurements of its location. And then I
11 collected it and put it into evidence and placed it into an
12 evidence locker at the sheriff's office evidence room.

13 Q At some point did you give it to Paul Dorman at the
14 sheriff's office?

15 A I believe he got it out of the evidence locker. The
16 evidence locker locks with a lock, and each investigator has
17 a key. So, it is not accessible to the public.

18 MR. WILLINGHAM: Your Honor, at this time I would like
19 to show State's Exhibit Number Three to the jury.

20 THE COURT: Yes, sir.

21 Q Mr. Dedmon, were you also asked to do a gunshot residue
22 kit on anyone on that day?

23 A Yes. I was asked to go to Spartanburg Regional
24 Hospital and do a gunshot kit, gunshot residue kit, on an
25 individual that was there at the hospital.

Shane Dedmon
Direct examination by Mr. Willingham

1 Q And what individual was that?

2 A It was the defendant.

3 Q Richard Moore?

4 A Yes.

5 Q Explain to the jury what a gunshot residue kit is.

6 A A gunshot residue kit is a kit that we apply to
7 someone's hands, and basically in the simplest form, it
8 tells us if someone has fired a gun. If they have residue
9 from holding a gun while it was shot or right beside the gun
10 while it was shot, they have the powder still on them,
11 basically.

12 Q And actually how do you physically apply the kit?

13 A There are several components. The first one, there is
14 basically containers that have little sticky ends on it.
15 And what you do is you take the person's palm and the back
16 of their hand. They have one for each side, for each hand.
17 And you just dab it. And it picks up any particles that are
18 on the hand. And then we use swabs. And then we swab the
19 hand. And we put the swabs into separate containers. And
20 it all fits back into the kit. And we seal the kit up at
21 that time and send it off to be processed at the lab.

22 Q And is that the procedure you followed when you did the
23 gunshot residue kit on the defendant, Moore?

24 A Yes.

25 (GSR kit from Richard Moore marked State's Exhibit

Shane Dedmon
Direct examination by Mr. Willingham

1 Number Ninety-eight for Identification.)

2 Q Let me show you what has been marked as State's Exhibit
3 Number Ninety-eight for identification purposes. Tell me if
4 you recognize that.

5 A Can I open it?

6 Q Sure, you can.

7 A Yes. This is the kit. It's got my initials and my
8 mark on the outside of the bag, which means I'm the one that
9 performed the kit.

10 MR. WILLINGHAM: Your Honor, at this time I would move
11 State's Exhibit Ninety-eight into evidence.

12 THE COURT: Any objection?

13 MR. MORIN: No, sir.

14 THE COURT: Without objection, it is admitted.

15 (GSR kit from Richard Moore marked State's Exhibit
16 Number Ninety-eight.)

17 Q After you collected this evidence, what did you do with
18 it?

19 A I also took it back to the sheriff's office evidence
20 room and placed it into lockup for it to be sent down to
21 SLED where they do the test on it.

22 Q Deputy, if you would, answer any questions Mr. Morin or
23 the Court may have for you.

24 THE COURT: Mr. Morin.

25

Shane Dedmon
Cross-examination by Mr. Morin

1 CROSS-EXAMINATION

2 BY MR. MORIN

3 Q Officer, these two items, the gun and the residue kit,
4 you sent them both to the lab to be tested, is that right?

5 A I personally didn't send them. I put them into
6 evidence lockup in our evidence room at the sheriff's
7 office.

8 Q Is that a copy of what you filled out for the evidence
9 you collected?

10 A Yes.

11 Q Okay. And there's a part where it says laboratory
12 examination. Did you check that box yes?

13 A Yes.

14 Q Okay.

15 MR. MORIN: That's all I have, Your Honor.

16 MR. WILLINGHAM: Nothing further of this witness, Your
17 Honor.

18 THE COURT: Thank you, sir. You may step down.

19 MR. WILLINGHAM: The state calls Paul Dorman.

20 PAUL DORMAN, having been first duly
21 sworn, testified as follows:

22 THE COURT: State your name for the record, and spell
23 your last name, sir.

24 THE WITNESS: Paul N. Dorman, D-O-R-M-A-N.

25 MR. WILLINGHAM: Thank you, Your Honor.

Paul Dorman

Direct examination by Mr. Willingham

1 DIRECT EXAMINATION BY MR. WILLINGHAM

2 Q Mr. Dorman, it is obvious from your uniform you work
3 with the Spartanburg County Sheriff's Department.

4 A Yes, sir. I do.

5 Q How long have you been there?

6 A Approximately four and a half years.

7 Q And what do you do for them?

8 A I'm a forensic's investigator and AFIS analyst.

9 Q And what's a forensic investigator?

10 A My job is to investigate crime scenes and document that
11 scene with photographs and video, as well as collect and
12 preserve evidence and process evidence and process the scene
13 for any evidence at that location.

14 Q Okay. Were you working in that capacity on
15 September the 16th, 1999?

16 A Yes, sir, I was.

17 Q And were you called out to 366 Highway 221 that day?

18 A Yes, sir, I was.

19 Q Is that in Spartanburg County?

20 A Yes, sir, it is.

21 Q And what location is that?

22 A It's off of 221 at the corner of California.

23 Q Is it a business?

24 A Yes, sir, it is.

25 Q And what type of business is it?

Paul Dorman

Direct examination by Mr. Willingham

1 A It's a -- like a little convenience store, restaurant.
2 And at that time it had video poker machines at that
3 location.

4 Q Okay. What was -- do you remember the name of the
5 business?

6 A Nikki's. It was Nikki's Speedy Shop or something like
7 that.

8 Q Okay. What time did you get there?

9 A I am not exactly sure what time I got there. I know it
10 was early in the morning before daylight.

11 Q Okay. Once you got there, what did you find?

12 A When I arrived there, I met with Detective Denton. He
13 explained the situation, what we had inside the building, as
14 well as what was outside.

15 And once I observed the possible evidence outside, we
16 went inside, and I found a white male laying in the kitchen
17 deceased.

18 Q Okay. Any -- what type of evidence did you see
19 immediately appearing when you walked into the business?

20 A When you walked in the business, as soon as you walked
21 in the front door, there was signs of blood not only on the
22 door but in the doorway, all down the hallway into an area,
23 a serving area, which also housed snacks, Cokes, beer
24 cooler; and blood going into the kitchen area; and also
25 there was a large amount of blood in the kitchen area.

Paul Dorman

Direct examination by Mr. Willingham

1 Q Okay. And where did you find the victim in this case?

2 A The victim was actually in the kitchen area laying on
3 the floor right behind the counter.

4 Q What injuries were immediately apparent on the victim?

5 A As soon as you looked at the victim, his right arm was
6 at an unnatural angle. I could tell that it had been broken
7 somehow. There was also a bullet wound in the chest area.

8 Q Did the victim have blood on him?

9 A Yes, sir, he did.

10 Q Did the victim have blood on him that was consistent
11 with it being his own blood?

12 A In some areas, and then in other areas there was blood
13 that was not consistent with his wounds.

14 Q Explain that to the jury. Why do you say that?

15 A When you look at the way he was laying on the floor,
16 there was blood on the back of his leg and on the back of
17 his shirt which would not have been consistent with the
18 wounds that he had received.

19 Q As part of your job as a forensic investigator, you say
20 you process a crime scene. That means you collect evidence.

21 A Yes, sir.

22 Q What else do you do?

23 A I also photograph. I usually do a crime scene sketch,
24 take measurements at where the evidence is located and where
25 I collect it at.

Paul Dorman
Direct examination by Mr. Willingham

1 Q Okay. And did you do that in this case?

2 A Yes, sir, I did.

3 Q I show you what has been previously marked State's
4 Exhibit Number Thirty-one for identification purposes. Do
5 you recognize that?

6 A Yes, sir. It's a copy of the crime scene sketch that I
7 made earlier.

8 Q And you made this diagram?

9 A Yes, sir, I did.

10 Q Is this diagram to scale?

11 A No, sir, it is not.

12 Q And if you would, step down. This will probably be
13 easier.

14 (Whereupon, the witness left the stand.)

15 Q And explain to the jury what they are seeing here in
16 this diagram.

17 A This is the inner area of the business. This is the
18 front door area here which faces out to 221. When he comes
19 in the door, there's a small hallway. Just to the left
20 there's an eating area where there was a larger table, and
21 there were some smaller tables in there, as well as the
22 chairs.

23 When you come through this area here, there's a
24 doorway, open doorway, here. You are walking into another
25 eating area, as well as there's a Pepsi cooler and beer

Paul Dorman
Direct examination by Mr. Willingham

1 cooler and Coke coolers here.

2 There's a counter that runs part of the length of this
3 wall here with some chairs. And you come to the right. The
4 video machines were on this area, in this area here.

5 There is also bathrooms along this wall. In here you
6 are entering into the kitchen area. And then you walk
7 around the kitchen area and have a counter-top area here for
8 preparing food and what other business they were doing
9 there.

10 Back here is the sink area, as well as a storage
11 area -- cigarettes, bread, a sink, also another beer cooler.
12 And there is also a metal pallet in this location.

13 Q Okay. Go ahead and have a seat back.

14 (Whereupon, the witness returned to the stand.)

15 Q After -- let me ask you about that diagram and about
16 the store. How big is this place?

17 A The -- the inside of the business is 34 inches, I mean,
18 34 feet, four inches and a quarter; 29 feet, 11 inches.

19 Q In this courtroom, how big would that be?

20 A I would say you could probably fit the business in this
21 courtroom.

22 Q You could fit the whole building in this courtroom?

23 A I believe so.

24 THE COURT: Mr. Solicitor, let's let the bailiff get
25 out from back there. Then we will --

Paul Dorman
Direct examination by Mr. Willingham

1 Q Okay. Now, the next part of your job was to collect
2 evidence, is that right?

3 A Yes, sir, it was.

4 Q Was there a weapon found at the scene?

5 A Yes, sir.

6 Q Where was it located?

7 A One weapon that I located -- I located two actually in
8 the scene. One was laying right behind the victim.

9 Q Show me on this diagram where the victim is.

10 (Whereupon, the witness left the stand.)

11 A The victim was laying in this area here, and the
12 firearm was laying here.

13 Q Okay. And what type of gun was that?

14 A I believe that was the four -- that there was a Charter
15 Arms .44 Special Bulldog.

16 (Whereupon, the witness returned to the stand.)

17 (One Charter Arms .44 Special Caliber Revolver, Model
18 Bulldog, Serial Number 841057 marked State's Exhibit Number
19 One for Identification.)

20 Q I show you what has been previously marked as State's
21 One and ask if you recognize that.

22 A Yes.

23 Q What is it?

24 A That's the Charter Arms .44 Bulldog that I located
25 inside the scene.

Paul Dorman
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: Your Honor, at this time I move
2 State's Exhibit Number One into evidence.

3 THE COURT: Any objection?

4 MR. MORIN: No, sir.

5 THE COURT: Without objection, it will be admitted.

6 (One Charter Arms .44 Special Caliber Revolver, Model
7 Bulldog, Serial Number 841057 marked State's Exhibit Number
8 One.)

9 Q What did you do with this gun after you recovered it?

10 A Once I unloaded it, I packaged it up back in that box
11 that you see there.

12 Once I took it from the scene, I took it to the office
13 and turned it into evidence. It was later submitted to SLED
14 for analysis.

15 Q Was there another weapon found at the scene?

16 A Yes, sir, there was.

17 Q And where was it found?

18 A That was found underneath a counter area close to this
19 area right in here, the counter-top here, this counter here,
20 right in that area.

21 Q And what type of weapon was it?

22 A A .38 revolver, if I am not mistaken, or a .32
23 revolver, excuse me.

24 (One New England Firearms .32 H & R Magnum Caliber
25 Revolver, Model R 73, Serial Number HJ006332 marked State's

Paul Dorman
Direct examination by Mr. Willingham

1 Exhibit Number Two for Identification.)

2 Q I show you what's been marked as State's Exhibit Number
3 Two and ask if you recognize that.

4 A Yes, sir. That's an H & R .32 revolver that I located.

5 Q And what did you do with that when you recovered it?

6 A I packaged it also in that box and sent it to evidence,
7 which was later sent to SLED, I believe.

8 MR. WILLINGHAM: Your Honor, at this time I move
9 State's Exhibit Number Two into evidence.

10 THE COURT: Any objection?

11 MR. MORIN: No objection.

12 THE COURT: Without objection, it will be admitted.

13 (One New England Firearms .32 H & R Magnum Caliber
14 Revolver, Model R 73, Serial Number HJ006332 marked State's
15 Exhibit Number Two; one unfired .45 Auto Caliber Cartridge
16 marked State's Exhibit Number Four for Identification.)

17 Q Showing you what's been marked State's Exhibit Number
18 Four and ask you if you recognize that.

19 A Yes, sir. It's a round that I recovered from the
20 scene. It appears to be a .45 caliber round.

21 Q Where did you recover that from?

22 A That particular round -- I would have to look at my
23 diagram here. Number One was found on the counter area.
24 That bullet was found on the counter.

25 Q If you would, show on that diagram where it was.

Paul Dorman
Direct examination by Mr. Willingham

1 (Whereupon, the witness left the stand.)

2 A Right in this area right here.

3 Q I am going to give you this. With that pointer you may
4 be able to show the jury to keep from having to get up every
5 time.

6 (Whereupon, the witness returned to the stand.)

7 A Basically, in that area right there.

8 Q Okay. And you collected that piece of evidence. And
9 what did you do with it?

10 A I packaged it in this film container and placed it into
11 the bag and later submitted it to our evidence section.

12 Q And the purpose of doing that?

13 A Was for later analysis possibly at SLED.

14 Q Okay.

15 MR. WILLINGHAM: Your Honor, we move State's Number
16 Four in at this time.

17 THE COURT: Any objection?

18 MR. MORIN: No, sir.

19 THE COURT: Without objection, State's Number Four is
20 admitted.

21 (One unfired .45 Auto Caliber Cartridge marked State's
22 Exhibit Number Four; one fired .45 Auto Caliber Cartridge
23 Cases marked State's Exhibit Number Five for
24 Identification.)

25 Q Showing you State's Exhibit Number Five. I ask if you

Paul Dorman
Direct examination by Mr. Willingham

1 recognize that.

2 A Yes, sir. That's a .45 caliber Smith and Wesson shell
3 casing that I recovered from the scene also.

4 Q Where did you recover that from?

5 A Number Four was located approximately right in this
6 area here where there is an overturned chip and candy
7 container.

8 Q And did you collect that piece of evidence as well?

9 A Yes, sir, I did.

10 Q Did you submit it to evidence --

11 A Yes, sir, I did.

12 Q -- to be submitted to SLED?

13 A Yes, sir.

14 MR. WILLINGHAM: Move State's Number Five into
15 evidence.

16 MR. MORIN: No objection.

17 THE COURT: Without objection, State's Number Five is
18 admitted.

19 (One fired .45 Auto Caliber Cartridge Cases marked
20 State's Exhibit Number Five; one fired .45 Auto Caliber
21 Cartridge Cases marked State's Exhibit Number Six for
22 Identification.)

23 Q Showing you State's Exhibit Number Six, and ask if you
24 recognize that.

25 A Yes, sir.

Paul Dorman
Direct examination by Mr. Willingham

1 Q What is it?

2 A It's another shell -- Smith and Wesson .45 shell casing
3 also that I recovered off the floor just right of the
4 women's bathroom door which was down in here.

5 Q Okay. Did you collect that piece of evidence?

6 A Excuse me. It was right, right about in there.

7 Yes, sir, I collected it, packaged it and submitted it
8 to our evidence section, which later sent it to SLED.

9 MR. WILLINGHAM: Your Honor, I move Number Six into
10 evidence.

11 THE COURT: Without objection, it will be admitted.

12 (One fired .45 Auto Caliber Cartridge Cases marked
13 State's Exhibit Number Six; one fired .45 Auto Caliber
14 Cartridge cases marked State's Exhibit Number Seven for
15 Identification.)

16 Q Showing you State's Exhibit Number Seven. I ask you if
17 you recognize that.

18 A Yes, sir. That's another .45, Smith and Wesson .45
19 caliber shell casing also recovered from the scene. It was
20 located basically in this area. There was a York peppermint
21 candy box there, and it was laying inside there. That was
22 also packaged by myself and submitted to SLED, or to
23 evidence and then submitted to SLED.

24 MR. WILLINGHAM: I move Number Seven.

25 THE COURT: Without objection, State's Number Seven

Paul Dorman
Direct examination by Mr. Willingham

1 will be admitted.

2 (One fired .45 Auto Caliber Cartridge cases marked
3 State's Exhibit Number Seven; one fired .45 Auto Caliber
4 Cartridge Cases marked State's Exhibit Number Eight for
5 Identification.)

6 Q Showing you State's Exhibit Number Eight, I ask if you
7 recognize that.

8 A Yes, sir. Another .45 shell casing also collected by
9 myself. It was under the sink area, right under that corner
10 right there of the sink area in the kitchen. I also
11 packaged it and submitted it to our evidence. And it was
12 later submitted to SLED.

13 MR. WILLINGHAM: Your Honor, at this time I would move
14 State's Eight.

15 THE COURT: Without objection, State's Number Eight
16 will be admitted.

17 (One fired .45 Auto Caliber Cartridge Cases marked
18 State's Exhibit Number Eight; one fired .45 Auto Caliber
19 Cartridge Cases marked State's Exhibit Number Nine for
20 Identification.)

21 Q I show you what has been marked as State's Exhibit
22 Number nine. What is that?

23 A That's another .45 shell casing that I collected. It
24 was located inside a Little Debbies display case on the
25 floor right there, that case, right there, inside. I

Paul Dorman
Direct examination by Mr. Willingham

1 packaged it also and submitted it to evidence and later
2 submitted it to SLED.

3 MR. WILLINGHAM: Move Number Nine, Your Honor.

4 THE COURT: Without objection, State's Number Nine will
5 be admitted.

6 (One fired .45 Auto Caliber Cartridge Cases marked
7 State's Exhibit Number Nine; one fired .45 Auto Caliber
8 Cartridge Cases marked State's Exhibit Number Ten for
9 Identification.)

10 Q Showing you State's Exhibit Number Ten. Do you
11 recognize that?

12 A Yes, sir. This is also another .45 caliber shell
13 casing that was laying in the floor in front of the counter
14 just left of the door. And I also packaged it and submitted
15 that to SLED also, or evidence and then to SLED.

16 MR. WILLINGHAM: Your Honor, at this time I move
17 State's Exhibit Number Ten.

18 THE COURT: Without objection, State's Number Ten will
19 be admitted.

20 (One fired .45 Auto Caliber Cartridge Cases marked
21 State's Exhibit Number Ten.)

22 Q Mr. Dorman, these all have been shell casings.

23 A Yes, sir.

24 Q Tell the jury what the difference between a bullet
25 shell casing and bullet core is.

Paul Dorman
Direct examination by Mr. Willingham

1 A Well, a bullet is normally considered the shell casing,
2 and the projectile that's encased into the shell casing, or
3 the core. So, it might be called, usually called, a live
4 round.

5 The shell casing is after the bullet has been fired.
6 That's what remains either in the gun, or if it is ejected
7 at the location. There can also be a shell casing -- could
8 be prior to putting the bullet together. There are many
9 fashions.

10 Q I'm going to show you State's Exhibit Number Ten again
11 and ask if that is a casing.

12 A Yes, sir.

13 MR. WILLINGHAM: Your Honor, at this time I publish
14 Number Ten to the jury.

15 THE COURT: Yes, sir.

16 (One four-way tire iron marked State's Exhibit Number
17 Eleven for Identification.)

18 Q I show you what has been marked as State's Exhibit
19 Number Eleven. I ask if you can tell what that is.

20 A That's a four-way lug wrench. I recovered that from
21 the kitchen area off of a desk, and I packaged that myself
22 and submitted it to evidence.

23 Q And you say a four-way lug wrench. It's a wrench that
24 has four --

25 A Four different sizes to fit different types of lugs on

Paul Dorman
Direct examination by Mr. Willingham

1 a car.

2 MR. WILLINGHAM: Your Honor, at this time I move Number
3 Eleven into evidence.

4 THE COURT: Without objection, it will be admitted.

5 (One four-way tire iron marked State's Exhibit Number
6 Eleven; one fired lead bullet core marked State's Exhibit
7 Number Twelve for Identification.)

8 Q Show you State's Exhibit Number Twelve and ask if you
9 recognize that.

10 A That is the projectile part of the core area of the
11 bullet that has been expelled from the gun. I located this
12 one off the floor inside the business just left of a Coke
13 bottle display, and that would have been down in this area
14 here.

15 Q Okay. Now that's different from the cartridge in that
16 that's actually a projectile.

17 A Yes, sir. This is the projectile.

18 Q Which means that it's the part that comes out of the
19 gun.

20 A Out of the gun, yes, sir.

21 MR. WILLINGHAM: Your Honor, at this time I would move
22 Number Twelve into evidence.

23 THE COURT: Without objection, it is admitted.

24 (One fired lead bullet core marked State's Exhibit
25 Number Twelve.)

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1 MR. WILLINGHAM: I would like to publish Twelve to the
2 jury.

3 THE COURT: All right, sir.

4 (One fired lead bullet core marked State's Exhibit
5 Number Thirteen for Identification.)

6 Q I show you what has been marked as State's Exhibit
7 Number Thirteen. Do you recognize that?

8 A Yes, sir.

9 Q What is it?

10 A That is a, also, spent projectile with a spent bullet
11 that was found in the parking lot of the business just to
12 the right rear tire of a Mercury Cougar that was out in the
13 parking lot in this area here.

14 MR. WILLINGHAM: Your Honor, at this time I move
15 State's Thirteen into evidence.

16 THE COURT: Without objection, it will be admitted.

17 (One fired lead bullet core marked State's Exhibit
18 Number Thirteen; one fired copper alloy jacketed bullet
19 marked State's Exhibit Number Fourteen for Identification.)

20 Q Showing you State's Fourteen. What is that?

21 A That is also a spent projectile or spent bullet. This
22 was located on the floor next to a desk in the kitchen area.
23 It was close to the victim's left leg.

24 Q If you would, show us where.

25 A Back in this area here.

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1 MR. WILLINGHAM: Your Honor, at this time I move
2 Fourteen into evidence.

3 THE COURT: Without objection, it will be admitted.

4 (One fired copper alloy jacketed bullet marked State's
5 Exhibit Number Fourteen; one fired copper alloy jacketed
6 bullet marked State's Exhibit Number Fifteen for
7 Identification.)

8 Q Showing you State's Fifteen.

9 A It's another spent bullet or spent projectile. That
10 was laying on the floor in the kitchen left of the ice
11 maker. I also packaged it and submitted it into evidence,
12 later submitted to SLED.

13 Q Can you show me where it was?

14 A That was Number Twelve. This area right in here.

15 MR. WILLINGHAM: Your Honor, I move Number Fifteen into
16 evidence.

17 THE COURT: Without objection, it will be admitted.

18 (One fired copper alloy jacketed bullet marked State's
19 Exhibit Number Fifteen; one fired copper alloy bullet jacket
20 fragment marked State's Exhibit Number Twenty for
21 Identification.)

22 Q Show you State's Exhibit Number Twenty and ask if you
23 recognize that.

24 A That is a part of a metal jacket that comes from a
25 bullet. And I located that also inside the building. And

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1 what it done, it had been imbedded into the wall just above
2 the video machine right in this area right here, up in the
3 corner area there. I had to actually dig it out of the
4 wall.

5 Q And when you say a metal jacket, tell me what that is.

6 A Okay. Bullets comes in different types.

7 Q Need you to speak up a little bit.

8 A Bullets come in different types. You'll have -- in
9 this particular case here you have a bullet that has a metal
10 jacket over the lead portion, and it actually covers the
11 projectile part of the bullet.

12 In this particular case when the bullet made impact
13 with the wall, it separated. And this is the portion I was
14 able to locate.

15 MR. WILLINGHAM: Your Honor, at this time I move
16 State's Twenty into evidence.

17 THE COURT: Without objection, it will be admitted.

18 (One fired copper alloy bullet jacket fragment marked
19 State's Exhibit Number Twenty; one fired aluminum bullet
20 jacket fragment marked State's Exhibit Number Twenty-one for
21 Identification.)

22 Q I show you State's Exhibit Number Twenty-one. Do you
23 recognize that?

24 A Yes, sir.

25 Q What is it?

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1 A That's another piece of metal jacket that I located.
2 That was on the floor behind the chip display case. It was
3 located right underneath and behind this chip display case
4 right there.

5 Q And that's another metal jacket?

6 A Yes, sir.

7 MR. WILLINGHAM: Your Honor, at this time I move
8 State's Twenty-one into evidence.

9 THE COURT: Without objection, it will be admitted.

10 (One fired aluminum bullet jacket fragment marked
11 State's Exhibit Number Twenty-one; one fired aluminum bullet
12 jacket fragment marked State's Exhibit Number Twenty-two for
13 Identification.)

14 MR. WILLINGHAM: I would like to publish to the jury.

15 THE COURT: Yes, sir.

16 Q Showing you State's Exhibit Number Twenty-two. Do you
17 recognize that?

18 A Yes, sir. That's also another piece of metal jacket
19 projectile. This was in the floor in the serving area also
20 next to a potato chip display. Number 26. That was down in
21 this area here.

22 MR. WILLINGHAM: Your Honor, at this time I move
23 State's Twenty-two into evidence.

24 THE COURT: Without objection, it will be admitted.

25 (One fired aluminum bullet jacket fragment marked

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1 State's Exhibit Number Twenty-two.)

2 Q Mr. Dorman, you indicated that there was a good amount
3 of blood also found at the scene.

4 A Yes, sir.

5 Q Did you make efforts to collect that blood?

6 A Yes, sir, I did.

7 Q What efforts did you do to collect blood?

8 A I photographed first to document. I documented its
9 location on my diagram, also took measurements where it was
10 located.

11 Then what I did is I took a sterile swab and collected
12 a blood sample from the different locations throughout the
13 store, collecting numerous swabs of blood.

14 Q When you say numerous swabs of blood, how many did you
15 actually collect?

16 A Fifty-six samples.

17 Q Fifty-six --

18 A Yes, sir.

19 Q -- swabs of blood.

20 A And that was from different locations.

21 Q Did you collect all of them, take them all into
22 evidence to be sent to SLED?

23 A Yes, sir, I did.

24 Q Mr. Dorman, I am only go to asking you about two.

25 A Okay, sir.

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1 (Swab from the floor front counter marked State's
2 Exhibit Number Twenty-seven for Identification.)

3 Q The first one is State's Exhibit Number Twenty-seven.
4 I ask if you recognize that.

5 A Yes, sir. That's blood samples, swabs, number four. I
6 located that on the floor in front of the counter which is
7 located right in this area right here.

8 Q Show me again.

9 A Right in this area right here.

10 MR. WILLINGHAM: Your Honor, at this time I move
11 State's Number Twenty-seven into evidence.

12 THE COURT: Without objection, it will be admitted.

13 (Swab from the floor front counter marked State's
14 Exhibit Number Twenty-seven; swab from floor behind chair
15 marked State's Exhibit Number Thirty-six for
16 Identification.)

17 Q I am going on show you what has been marked as State's
18 Exhibit Number Thirty-six. Do you recognize that?

19 A Yes, sir. That's blood sample swab number 13. I
20 located that on the floor behind the chair which is right
21 there.

22 MR. WILLINGHAM: Your Honor, at this time I move
23 State's Exhibit Number Thirty-six into evidence.

24 THE COURT: Without objection, it will be admitted.

25 (Swab from floor behind chair marked State's Exhibit

Paul Dorman
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1 Number Thirty-six; meat cleaver with wooden handle marked
2 State's Exhibit Number Eighty-three for Identification.)

3 Q I show you what has been marked as State's Exhibit
4 Number Eighty-three and ask if you recognize that.

5 A This is what I call a small meat cleaver. I located
6 that also in the kitchen area. It was right behind the
7 victim's feet in this area right over here.

8 Q Did you collect that and place it into evidence as
9 well?

10 A Yes, sir, I did.

11 MR. WILLINGHAM: Your Honor, at this time I move
12 State's Eighty-three into evidence.

13 THE COURT: Without objection, it will be admitted.

14 (Meat cleaver with wooden handle marked State's Exhibit
15 Number Eighty-three.)

16 Q When you say meat cleaver, what are you talking about?

17 A Yes, sir. It's like a large knife for cutting meat.

18 Q That's it?

19 A That's it, yes, sir.

20 MR. WILLINGHAM: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: Ladies and gentlemen of the jury, I believe
25 that this would probably be an appropriate point for us to

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1 take a break in our day for the lunch break. I know the
2 jury custodians have made arrangements to bring your lunch
3 in, and it should be here. If it is not already here, it
4 will be here shortly.

5 As I send you away for your lunch break, let me remind
6 you that you are not to discuss this case among yourselves
7 or with the people that you come into contact with in any
8 manner or fashion whatsoever.

9 The jury custodians, of course, will be in charge of
10 you and keep you in good custody.

11 We are going to suspend the consideration of this
12 officer's testimony at this time. We will pick it back up
13 at the end of the lunch break.

14 Depending on what time the lunch arrives and what time
15 I can estimate that it will take you to have your lunch and
16 then take a few minutes of relaxation, we'll start back
17 somewhere around a quarter of 2:00 or thereabouts.

18 So, with that instruction, I hope that you have a nice
19 lunch break. And we will look forward to seeing you back
20 here in an hour and ten minutes or so.

21 The jury may retire to the jury room. Everyone else
22 remain seated while they exit the courtroom, please.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: All right. Officer Dorman, I'm going to

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1 instruct you, sir, that you're still subject for further
2 direct, as well as cross-examination. And during the lunch
3 break you are not to discuss your testimony with anyone.
4 And we will resume at the end of the lunch break with you.

5 Anything from the state before we break for lunch?

6 MR. GOWDY: No, sir, Your Honor.

7 THE COURT: And from the defense?

8 MR. MORIN: No, sir.

9 THE COURT: All right. As I told the jury, our time to
10 start back is a little elusive. Hopefully, we will be able
11 to start back about a quarter of 2:00. If their lunch is a
12 little bit late, we may have to move that back a little bit.

13 So just stay tuned, but I would say that you could be
14 back here at quarter of 2:00.

15 MR. GOWDY: Thank you, Your Honor.

16 THE COURT: All right. We'll stand in recess.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Is the state ready?

19 MR. GOWDY: Your Honor, there is a matter that relates
20 to the next witness, but in terms of continuity --

21 THE COURT: Okay.

22 MR. GOWDY: -- I didn't know whether the Court wanted
23 to --

24 THE COURT: I'll be glad to entertain it now.

25 MR. GOWDY: After Deputy Dorman gets through

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1 testifying, we have a series of co-employees from Nikki's
2 Store. As I understood the defense's opening, James Mahoney
3 was alleged to have been the primary aggressor and fired the
4 first shot. And then there was an exchange of words.

5 I would argue to the Court or submit to the Court that
6 under the rules of evidence that I am now entitled to rebut
7 that notion that Mahoney was the primary aggressor. And
8 these three witnesses would be prepared to do so.

9 Their testimony would range from his physical
10 condition, which I think is independently relevant, even if
11 Your Honor did not -- did not view it as appropriate at this
12 time to go into the aggression part.

13 I think his physical condition, the condition of his
14 hands, his height, his weight, his health is independently
15 relevant.

16 But, in particular, Your Honor, there was a previous
17 robbery at Nikki's where Mr. Mahoney had the gun on him like
18 he did in this one and was pushed to the ground and robbed
19 and never did a single solitary thing about it.

20 If they're going to allege under the rules that
21 Mr. Mahoney was the primary aggressor, I am going to ask the
22 Court to allow us to rebut that under the rule.

23 MR. MORIN: First of all, I didn't say that in opening.
24 I think it's going to be supported by the testimony.

25 Secondly, it sounds to me like he wants to put the

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1 victim's character, good character, into issue, which I
2 don't think is proper.

3 And, thirdly, in reference to the other robbery, I
4 represented the defendant in that case. Mr. Mahoney did not
5 have the gun in his possession at that time. It was on the
6 counter. And I don't think that that's relevant either.

7 THE COURT: I think that insofar as the issue of the
8 other robbery, that's not something that's going to come in.
9 We are here on this particular case, and I am not going to
10 let it get confused with another case.

11 Now, insofar as if it is important as to physical
12 characteristics -- size, height, weight, those kind of
13 things, if a disability, and, you know, I don't know what
14 you were talking about, or something like that -- I think
15 that you can elicit that.

16 MR. GOWDY: Thank you, Your Honor.

17 And on -- Mr. Morin had said that we were trying to
18 elicit character testimony. He is exactly right. It's Rule
19 404(a)(2), "Evidence of a pertinent trait of character of
20 the victim of the crime offered by an accused, or by the
21 prosecution to rebut the same, or evidence of a character
22 trait of peacefulness of the victim offered by the
23 prosecution in a homicide case to rebut evidence that the
24 victim was the first aggressor," -- are the perimeters of
25 Your Honor's ruling on what we can elicit from these three

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1 witnesses, his physical characteristic? Can I ask him
2 about his character for peacefulness under this rule?

3 THE COURT: Well, you know, two things come to mind.

4 Number one, when we talk about what the lawyer said in
5 the opening, what lawyers say is not evidence, number one.

6 Number two, there has been testimony that has been
7 offered through the direct, well, let's say through the
8 cross, of Terry Hadden insofar as what went on between the
9 victim and the assailant.

10 And insofar as 404(a)(2) is concerned, when it talks
11 about evidence of a pertinent trait of character of the
12 victim of the crime offered by an accused or by the
13 prosecution to rebut the same, or evidence of a character
14 trait of peacefulness of the victim offered by the
15 prosecution in a homicide case to rebut evidence that the
16 victim was the first aggressor, I think that since an issue
17 is in this case that he was the aggressor, then I'm going to
18 allow you to get into that.

19 But, now, how far are you going to try to go with it?

20 MR. GOWDY: Not very far, Your Honor. I would simply
21 like to ask these three witnesses, all of whom worked around
22 him, I think, for four years, Your Honor, whether or not he
23 was -- whether or not he had ever verbally assaulted or
24 physically assaulted a customer, or whether or not he, as
25 the tracks the word in the rule, Your Honor, whether or not

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1 he was a peaceable or peaceful person.

2 THE COURT: I think that the -- that that's the way I
3 envision it under the rule, is he a peaceful person or, you
4 know, not a belligerent person, however you want to put it.

5 But if you try to get beyond that, I think that you are
6 going beyond the scope of the rule.

7 MR. GOWDY: Yes, sir.

8 MR. MORIN: Your Honor, just for the record --

9 THE COURT: Is that Mr. Swirling's little handbook?

10 MR. MORIN: I am just reading from the rules, but, yes,
11 sir, that's his --

12 THE COURT: Okay. I just wanted to make sure.

13 MR. MORIN: My position on 404(a)(2) is he is entitled
14 to put in evidence to rebut evidence. Now, I haven't
15 presented any evidence.

16 THE COURT: Evidence comes in the form of
17 cross-examination, now, Mr. Morin. It came in.

18 MR. MORIN: Okay. Well, that's fine.

19 THE COURT: Do you disagree with that?

20 MR. MORIN: Well, it's not evidence in the sense that I
21 have gone into whether or not Mr. Mahoney -- this was a
22 specific instance. And I was asking him about facts that
23 occurred that evening.

24 I haven't attacked Mr. Mahoney's character or put his
25 character traits into evidence. I simply asked the

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1 gentleman what he saw that night, which I don't think rises
2 to the level of me putting the character trait, or putting
3 in evidence of his character.

4 Now, the rule does allow him to rebut it should I do
5 that, but I don't think that I have opened the door by
6 simply asking a witness what he saw that evening.

7 MR. GOWDY: Your Honor, if the Court would prefer that
8 I, that we wait until, I mean, I would agree with Your Honor
9 that obviously opening statement is not evidence.

10 But when the door is not only ajar but kicked wide open
11 by telling the jury that the victim fired the first shot, I
12 am not sure how many punches I have to take before I can
13 rebut that.

14 THE COURT: Well, you know, that's what's wrong with
15 opening statements.

16 Quite frankly, I wish we would do away with them. I
17 mean, why have a trial, more times than not?

18 All an opening statements is is for people to get up
19 and make outlandish statements. That's all it is.

20 Well, we will see what comes out, and you can do it in
21 reply if necessary.

22 MR. GOWDY: Thank you, Your Honor.

23 THE COURT: So, but I will be very vigilant if any
24 doors are opened. So you be vigilant about opening them.

25 MR. MORIN: Yes, sir.

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1 THE COURT: Okay.

2 MR. WILLINGHAM: Your Honor, one other matter before we
3 bring the jury back in.

4 I have a series of 22 photographs that we discussed
5 with the defense. And we have premarked. And I believe we
6 can agree to go ahead and submit them into evidence as
7 State's Exhibit Number Thirty-four.

8 THE COURT: One exhibit of 22?

9 MR. WILLINGHAM: Yes, sir.

10 THE COURT: All right.

11 MR. WILLINGHAM: State's Exhibit Number Thirty-five is
12 photographs. There is eight photographs. State's Exhibit
13 Number Thirty-five, again, already agreed to by the defense.

14 THE COURT: Okay.

15 MR. WILLINGHAM: That way, Your Honor, I can just go
16 ahead and put it up on the screen.

17 THE COURT: Do you understand? And you are in
18 agreement with that, gentlemen.

19 MR. MORIN: Yes, sir.

20 THE COURT: Okay. Very good. Is the state ready to
21 proceed?

22 MR. WILLINGHAM: Yes, sir, Your Honor.

23 THE COURT: Is the defense ready?

24 MR. MORIN: Yes, sir.

25 THE COURT: Bring them back, please, Cotton.

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1 (Photographs marked State's Exhibit Number
2 Thirty-four.)

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: Thank you very much, Madam Foreperson,
6 ladies and gentlemen. I hope you had a nice lunch break.

7 We're going to continue with the state's case.

8 I am going to call Officer Dorman back to the stand,
9 please.

10 And I will remind you, sir, that you are under oath.

11 THE WITNESS: Yes, sir.

12 MR. WILLINGHAM: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 CONTINUED DIRECT EXAMINATION BY MR. WILLINGHAM

15 Q Mr. Dorman, I'm going to show you what has been
16 premarked as State's Exhibit Number Thirty-four consisting
17 of 22 photographs. Do you recognize those?

18 A Yes, sir, I do.

19 Q Do those photographs accurately depict the scene as you
20 found it on Highway 221 on September the 16th, 1999?

21 A Yes, sir, they do. Yes, sir. These are photographs
22 that I did take.

23 Q I show you the first photograph. Can you tell me what
24 that is?

25 A That is the front of Nikki's Speedy Mart on 221 facing

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1 from 221 back towards the front of the building. You can
2 see a red -- a pickup truck and --

3 Q You need to speak up just a little bit.

4 A Depicts a red pickup truck, a Mercury Cougar, and then
5 the front of the store.

6 Q Is that how you found the scene that night when you
7 arrived?

8 A Yes, sir, when I arrived, that's how I found it.

9 Q I show you another photograph. Do you know what that
10 is?

11 A That is the inside of the store right at the edge of
12 where the video poker machines are located at, looking back
13 towards the kitchen and eating area of the middle portion of
14 the store.

15 Q Okay. Do this for me. Relate that picture to that
16 diagram. What are we looking at?

17 A Okay. This area here from this doorway here going back
18 here is a counter top, which would be this doorway here
19 going across to this counter top. You can see the three
20 chairs here. There is the three chairs there. There is
21 your Little Debbies display. That would be that right here.
22 There is Cokes and a trash can there.

23 Q I notice in the photograph there appears to be
24 something on the floor here going towards that door.

25 A Yes, sir.

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1 Q What is that?

2 A That's blood that was at the scene.

3 Q And that's some of the blood that you collected samples
4 on that you testified earlier.

5 A Yes, sir.

6 Q What's that a picture of?

7 A This is the video poker machine area which is down in
8 here. This is the overturned chair there, which is depicted
9 here. This is the candy-chip type display case with soft
10 drinks, storage area. And that would be this area right
11 here.

12 Q Okay. These numbers that are on the, the little
13 placard numbers here --

14 A Yes, sir.

15 Q What are those? What do those represent?

16 A Those represent areas where I located evidence such as
17 the bullets and some other items that I collected up in that
18 area.

19 Q Another photograph. What is that?

20 A What's standing in the doorway of the kitchen. I was
21 standing right here and shooting back this direction here.
22 You can see the video poker machines here. There's four of
23 them. And behind this wall here is the fifth one here.

24 Q And more clearly you can see that trail of blood.

25 A Yes, sir. More blood leading this way.

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1 Q Is this just another angle?

2 A Yes, sir. I was standing approximately in this area
3 here, right in this area, right around the doorway that
4 leads through the hallway.

5 The front door is out this way as you walk into this
6 area. This leads back to the counter top. That leads back
7 to the kitchen door. There is your restrooms here and the
8 poker machines back over here.

9 Q What's that?

10 A That is a kitchen area. The door leading into the
11 kitchen is here. You lead in going back towards the back,
12 which would be here leaning back that way.

13 Q What's this up here?

14 A This here is blood. You can see where it's come down
15 the side of the desk here, and it's pooled in this area
16 right here.

17 Q That's where the victim was found?

18 A The victim was found in this area right here.

19 Q Is that how you found the victim?

20 A Yes, sir.

21 Q You indicated that his arm was in an abnormal position.

22 A Yes, sir, and that's --

23 Q Would you explain to this jury what you are talking
24 about?

25 A If you look at his arm here, what happened there above

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1 the elbow, what happened, his arm was turned, basically,
2 broken in this area and turned with the arm up and the thumb
3 going in the wrong direction.

4 Q State's Exhibit Number One is a handgun, .44 caliber.

5 A Yes, sir.

6 Q Is that handgun in that picture?

7 A Yes, sir. It's located right there. See the black
8 stool here? It is between the head and that stool, the
9 victim, right in that area.

10 Q State's Exhibit Number Eighty-three is what you call
11 the meat cleaver. I don't know if the jury has seen that.
12 Show the jury where you recovered that from.

13 A Right there between the victim's legs.

14 Q The victim's back?

15 A Yes, sir.

16 Q What's that?

17 A That area where blood has dropped on the victim.

18 Q And when you say the blood is dropped on the victim,
19 what do you mean?

20 A Someone had to be bleeding, either passed over and
21 walked around him causing the blood to drop down on top of
22 him --

23 Q And where was the victim shot?

24 A Had one wound to the arm and one to the chest.

25 Q The blood on the victim's back, does that correspond to

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1 any injury the victim had?

2 MR. MORIN: Objection, Your Honor, ability to testify
3 to these issues. I haven't heard any --

4 THE COURT: Yes, sir. I think you are going to need to
5 speak up. I think everybody is going to need to speak up.

6 MR. MORIN: The qualifications to answer these
7 questions hasn't been established.

8 THE COURT: Overruled.

9 Q Mr. Dorman, do those marks of blood, drops of blood,
10 correspond to any injuries the victim had?

11 A No, sir, they do not.

12 Q Tell me what that is.

13 A That is behind the desk area. The stool would have
14 been in this area. This is the drawers of the desk. When I
15 found them, they were open.

16 This here, it would be this counter top area right
17 here. Those are where the drawers were, right in that area.
18 That also depicts blood that was on the floor, as well as in
19 this area here.

20 Q Tell me what that is.

21 A That is the front doors of the business looking from
22 the inside out. I was standing in this area here shooting
23 out, and that blood there is all on the inside of the door.

24 Q What's that?

25 A That is from the outside looking in, from out here

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1 looking in -- is one of the first photographs that I took
2 during that morning when I started doing my investigation.

3 Q What's all of this?

4 A This here is blood, also at the front door on the
5 inside, which is here. There is a magazine rack right -- or
6 not magazine, but a paper rack right there. There was blood
7 on the paper, as well as the walls, and on the floor here
8 and, of course, the doors.

9 Q You also took photographs of where you recovered some
10 of the shell casings, did you not?

11 A Yes, sir, I did.

12 Q And what is that?

13 A That's a shell casing that was found underneath the
14 sink area. That's one of those .45 caliber shell casings
15 that I located. There is the .45 caliber shell casing also,
16 and that's one that was located on your peppermint patty box
17 there.

18 Q On the counter?

19 A Yes, sir.

20 Q What's that?

21 A That is the piece of the metal part of the projectile
22 that had separated that was found behind the potato chip
23 display just to the left of the bathroom area.

24 Q Which on that chart is what?

25 A Which is right there.

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1 Q What is that?

2 A That there is where a bullet had impacted into the wall
3 just above the sink area.

4 Q And that would be where on the digram?

5 A That would be right in that area there.

6 Q What's that?

7 A There is a paper sack that was on the counter right
8 here. It's a bullet hole that passed through -- a bullet
9 had passed through the sack going out.

10 Q Is that another picture of it?

11 A Yes, sir. That's the opposite side.

12 Q I show you what's been previously marked as State's
13 Exhibit Number Seventeen. If you would, look through there
14 and tell me what that is.

15 A There is a brown paper sack which is depicted in that
16 photograph. Inside that sack are two beer cans which are
17 Ice House, as well as a piece of paper that was previously
18 shown in the other photograph that had blood spatter on it.

19 Q Did you collect those items --

20 A Yes, sir, I did.

21 Q -- and place them into evidence?

22 A Yes, sir, I did.

23 MR. WILLINGHAM: Your Honor, at this time I move
24 State's Seventeen into evidence.

25 THE COURT: Any objection?

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1 MR. MORIN: No, sir.

2 THE COURT: Without objection, it will be admitted.

3 (Paper bag marked State's Exhibit Number Seventeen.)

4 Q Tell me what that is.

5 A There is a button right there next to that pen.

6 THE COURT: I need to get you to speak up a little bit,
7 please, sir.

8 A There is a button right there. I was trying to depict
9 that button in the vicinity of the paper sack.

10 Q I show you State's Exhibit Number One Hundred and ask
11 if you recognize that.

12 A Yes, sir.

13 Q What's that?

14 A That's that white button that is depicted there. It
15 was located right in that area there.

16 Q Did you collect that piece of evidence --

17 A Yes, sir.

18 Q -- and turn it into evidence --

19 A Yes, sir, I did.

20 Q -- for submission to SLED?

21 A Yes, sir.

22 MR. WILLINGHAM: Your Honor, at this time I move
23 State's Exhibit Number One Hundred into evidence.

24 THE COURT: Without objection, it is admitted.

25 (White shirt button marked State's Exhibit Number One

Paul Dorman
Direct examination by Mr. Willingham

1 Hundred.)

2 Q Mr. Dorman, after you left and completed your
3 processing of the crime scene at Highway 221, where did you
4 go next?

5 A We went to the location where it was said the suspect's
6 pickup truck was located at.

7 Q And was that at 131 Hillside Drive?

8 A Yes, sir, it was.

9 Q When you arrived there, what did you find?

10 A When we arrived there, there was a Chevrolet pickup
11 truck, green and white in color. It was backed into a
12 telephone pole.

13 Q Does that appear to be, referring to State's Exhibit
14 Number Thirty-five, does that appear what you found at 131
15 Hillside?

16 A Yes, sir. That's the truck.

17 Q Where is the telephone pole?

18 A Right here.

19 Q Did you look inside that pickup truck?

20 A Yes, sir, I did.

21 Q And what did you find inside?

22 A There was a money bag, a blue money bag. There was
23 some money inside of it. There was also some money on the
24 front seat. There was a knife in there. And there was
25 blood not only on the seat but also on the left door, inside

Paul Dorman
Direct examination by Mr. Willingham

1 and outside.

2 Q I show you another picture in State's Thirty-five. Do
3 you recognize that?

4 A Yes, sir.

5 Q What is it?

6 A That is a photograph of the pickup truck, looking from
7 the left side, driver's, into the pickup truck. The money
8 is here with some money inside of it. And you can also see
9 money here spread out across the seat.

10 Q Showing you State's Exhibit Number Eighty-seven, and
11 ask if you recognize that.

12 A Yes, sir.

13 Q What is it?

14 A This is the blue money bag that I recovered from the
15 scene, the vehicle.

16 Q Is that the same money bag as we see in the picture?

17 A That's the money bag right there. That blood spot
18 right there is depicted in the bag itself.

19 Q Did you collect this item?

20 A Yes, sir, I did.

21 Q Did you put it into evidence for submission to SLED?

22 A Yes, sir, I did.

23 MR. WILLINGHAM: Your Honor, at this time I move
24 State's Eighty-seven into evidence.

25 THE COURT: Without objection, it will be admitted.

Paul Dorman
Direct examination by Mr. Willingham

1 (Blue money bag marked State's Exhibit Number
2 Eighty-seven.)

3 Q I show you that photograph. What is that?

4 A That is also the money that is located inside the
5 truck, as well as some money in the background here.

6 (Money from seat marked State's Exhibit Number
7 Twenty-nine for Identification; \$85 marked State's Exhibit
8 Number Eighty-nine for Identification.)

9 Q I show you State's Exhibit Number Eighty-nine and
10 State's Exhibit Number Twenty-nine.

11 A Yes, sir.

12 Q Tell me if you recognize those items.

13 A Yes, sir, I do.

14 Q What are they?

15 A That's the money that came out of the truck, and both
16 of these contain the money that came out, less \$5. There
17 was a \$5 bill found in the back seat or the back yard of the
18 residence that was also placed into evidence.

19 Q Okay. What was the total amount of money found?

20 A Came out to \$1,408.

21 Q \$1,408?

22 A Yes, sir.

23 Q Now, that money is packaged separately.

24 A Yes, sir.

25 Q Can you tell me why?

Paul Dorman

Direct examination by Mr. Willingham

1 A Some of this money had blood on it, and, so, I took out
2 a part of it to submit to SLED so it could be analyzed for
3 blood. And the rest of it I left here at the sheriff's
4 office.

5 MR. WILLINGHAM: If I can have just a moment, Your
6 Honor.

7 THE COURT: Certainly.

8 (Pause.)

9 Q Tell me what that is.

10 A That is a pocketknife that was found in the front seat
11 of the vehicle.

12 Q I show you State's Exhibit Number Eighty-six. Do you
13 recognize that?

14 A Yes, sir. That's the pocketknife that I located under
15 the money in the truck, and I packaged that.

16 Q And was that placed into evidence?

17 A What had happened is Investigator Lacy had recovered it
18 for me and handed it to me, and we packaged it together.

19 Q Is that the same knife we see in that picture?

20 A Yes, sir, that's the same knife.

21 MR. WILLINGHAM: Your Honor, at this time I move
22 State's Exhibit Number Eighty-six into evidence.

23 THE COURT: Without objection, it is admitted.

24 (Pocketknife marked State's Exhibit Number Eighty-six.)

25 Q Is that the same knife?

Paul Dorman
Direct examination by Mr. Willingham

- 1 A Yes, sir, it is.
- 2 Q Did you find it like that, open?
- 3 A It was opened, yes, sir.
- 4 Q Okay.
- 5 A It was originally under that pack, pack of money. Then
- 6 we photographed it to show the vicinity where it was located
- 7 at.
- 8 Q And you didn't open it.
- 9 A No, sir. It was already open.
- 10 Q Tell me what that is.
- 11 A That is also the left side of the vehicle. This area
- 12 here, here and all along this side here is blood that had --
- 13 when the driver was driving down the road, had come down and
- 14 basically just sprayed the side of the car with it, or the
- 15 truck.
- 16 Q Tell me what that is.
- 17 A If you was facing the house where this vehicle is
- 18 located at, on the right rear corner of the house there was
- 19 a white t-shirt which is depicted here, and just to the
- 20 right of it was a five-dollar bill here.
- 21 Q And that was where, how close to the house?
- 22 A It was right off the corner. It would be the rear
- 23 corner of the house.
- 24 Q Okay. You indicated that five-dollar bill --
- 25 A Yes, sir.

Paul Dorman
Direct examination by Mr. Willingham

- 1 Q -- has already been packaged with this money.
- 2 A Yes, sir. In fact, it is the five-dollar bill that is
- 3 located in the smaller package.
- 4 Q Located here?
- 5 A Yes, sir.
- 6 Q And what is that?
- 7 A That is a white t-shirt that we found back there, sir.
- 8 Q And what's on it?
- 9 A It was blood.
- 10 Q Showing you what has been marked as State's Exhibit
- 11 Number Eighty-eight, do you recognize that?
- 12 A Yes, sir.
- 13 Q What is it?
- 14 A This is the white t-shirt that Investigator Lacy and I
- 15 collected.
- 16 Q Did you place that into evidence --
- 17 A Yes, sir, I did.
- 18 Q -- for submission to SLED?
- 19 A Yes, sir.
- 20 MR. WILLINGHAM: Your Honor, at this time I move
- 21 State's Exhibit Number Eighty-eight into evidence.
- 22 THE COURT: Without objection, it will be admitted.
- 23 (White sleeveless t-shirt marked State's Exhibit Number
- 24 Eighty-eight.)
- 25 Q Tell me what that is.

Paul Dorman
Direct examination by Mr. Willingham

1 A That is a wallet belonging to the defendant that was
2 located in the roadway. The truck would be up in this area
3 here. When we first arrived on the scene, the patrol
4 officer showed us where it was laying in the roadway, and we
5 immediately collected it.

6 Q Showing you what has been marked as State's Exhibit
7 Sixteen, can you tell me what that is?

8 A There is a package of Citation Menthol Cigarettes which
9 is depicted here, and a man's wallet which is depicted
10 there. Investigator Lacy picked it up. I took the bag and
11 dropped it into the bag, and I filled it out.

12 Q You indicated that was --

13 MR. WILLINGHAM: I move State's Exhibit Sixteen into
14 evidence, Your Honor.

15 THE COURT: Without objection, it will be admitted.

16 (Defendant's wallet marked State's Exhibit Number
17 Sixteen.)

18 Q You indicated that State's Exhibit Sixteen was the
19 defendant's wallet.

20 A Yes, sir.

21 Q How do you know that?

22 A Because there was paperwork inside the wallet with his
23 name on it.

24 Q Is this the wallet?

25 A Yes, sir.

Paul Dorman

Direct examination by Mr. Willingham

1 Q What's that?

2 A It appears to be a pawn dealer ticket from Fast Cash
3 Pawn. It has Mr. Moore's name on it, and the date, his date
4 of birth and I. D. Number, Social Security Number, a
5 description about himself. And it showed where he pawned
6 a -- pawned or sold a, looks like a, link necklace at one
7 time on a certain date.

8 Q Another piece of paper from the wallet?

9 A That's another Fast Cash -- First Cash pawn ticket.
10 And it depicts Mr. Moore's name, as well as some other
11 information, supposedly an address, and a camera that he had
12 also sold.

13 Q What's that?

14 A This is a birth certificate showing Mr. Moore's date of
15 birth, his parents' name and location of birth.

16 Q And what is that?

17 A And that is his driver's license, coming back to
18 Richard Bernard Moore, a South Carolina driver's license or
19 identification card. Excuse me.

20 MR. WILLINGHAM: Your Honor, at this time I move
21 State's Exhibit Number Thirty-five into evidence, which is
22 consisting of eight photographs. And additionally at this
23 time I would like to move State's Exhibit Number
24 Thirty-seven into evidence, which is two photographs. I've
25 shown them to the defense.

Paul Dorman
Direct examination by Mr. Willingham

1 THE COURT: Without objection.

2 (Eight photographs marked State's Exhibit Number
3 Thirty-five; two photographs marked State's Exhibit Number
4 Thirty-seven.)

5 Q Showing you State's Exhibit Number Thirty-seven. Tell
6 me what that is.

7 A That is inside the store. There is the video poker
8 machines. Where I was photographing there, is right up in
9 that corner where I found that piece of projectile in the
10 wall right up in there.

11 Q Also part of Thirty-seven?

12 A Yes, sir. That's where the bullet had struck the wall
13 and had lodged inside there.

14 Q And that is right up over the video poker machine.

15 A Yes, sir.

16 Q Mr. Dorman, you were the primary forensic agent on this
17 case, is that right?

18 A Yes, sir, I was.

19 Q And other agents may have taken part in this
20 investigation. They turned the evidence over to you, is
21 that correct?

22 A Yes, sir.

23 Q State's Exhibit Number Three is a .45 caliber pistol
24 already been testified found on Highway Nine. Was that
25 given to you?

Paul Dorman
Direct examination by Mr. Willingham

1 A Yes, sir, it was.

2 Q Did you package it for SLED?

3 A Yes, sir, I did.

4 Q Was that given to you as the chain of evidence?

5 A Yes, sir, it was.

6 Q Showing you what has been marked as State's Exhibit
7 Number Eighty. Do you recognize that?

8 A What this was, there was a vial of blood that was
9 obtained from the defendant, Mr. Moore. And it was handed
10 over to me by Steve Denton. I then took it and packaged it,
11 and it was given to evidence and then later submitted to
12 SLED.

13 Q To SLED?

14 A Yes, sir.

15 MR. WILLINGHAM: State's Eighty. We move into
16 evidence, Your Honor.

17 THE COURT: Without objection, it will be admitted.

18 (Blood standard from Richard Bernard Moore marked
19 State's Exhibit Number Eighty.)

20 Q Showing you State's Exhibit Number Ninety-seven.
21 Ninety-seven, do you recognize that?

22 A Yes, sir.

23 Q What is it?

24 A This particular bottle contained a projectile that was
25 removed from Mr. Mahoney's arm during autopsy. It was

Paul Dorman

Direct examination by Mr. Willingham

1 collected by Investigator Murphy who later turned it over to
2 me, and it was submitted to the lab.

3 Q To the SLED lab?

4 A Yes, sir.

5 MR. WILLINGHAM: Your Honor, at this time the state
6 would move Ninety-seven into evidence.

7 THE COURT: Without objection, it will be admitted.

8 (One fired copper alloy bullet marked State's Exhibit
9 Number Ninety-seven.)

10 Q Showing you what has been marked as State's Exhibit
11 Ninety-nine. Can you tell me what that is?

12 A This is a gunshot residue kit that was collected from
13 the victim, James Mahoney, by Investigator Murphy. It was
14 later -- we submitted it into evidence and sent to SLED for
15 analysis.

16 MR. WILLINGHAM: Your Honor, at this time the state
17 moves Ninety-nine into evidence.

18 THE COURT: Without objection, it will be admitted.

19 (GSR kit from James Mahoney marked State's Exhibit
20 Number Ninety-nine.)

21 MR. WILLINGHAM: May I have just a moment, Your Honor?

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. WILLINGHAM: Your Honor, I have no other questions
25 at this time of this witness.

Paul Dorman
Cross-examination by Mr. Morin

1 Q Please answer any questions the defense attorney or the
2 Court may have for you.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. MORIN

6 Q Officer Dorman, I understand that some other officers
7 assisted you in collecting evidence, is that right?

8 A Yes, sir, they did.

9 Q Now, there has been quite a few photographs that have
10 been put into evidence. How many of you were taking
11 pictures out there that day?

12 A Well, during the original -- when I first went there,
13 there was just myself until the late afternoon hours when
14 Investigator Lacy came on duty. He came out to help me.

15 That particular day we were shorthanded, so there was
16 no one to assist me until he came on. When he came on duty,
17 he assisted me in this particular case.

18 When I first got there, Investigator Dedmon, he had
19 already come to the scene and was at the scene. He was
20 getting ready to get off duty that night. He had already
21 worked a full shift.

22 So I had Dedmon when I first got there, and then he
23 left. And then for most of the day I was by myself. And
24 then Lacy came in later.

25 Then during the autopsy, I was not available for the

Paul Dorman
Cross-examination by Mr. Morin

1 autopsy. So, Investigator Murphy did that for me.

2 As far as photography at the scene, both of those
3 scenes were done by myself and Blair Lacy.

4 Q Okay. Now, when you took the photographs of the scene
5 did you -- was anything moved and then more photographs
6 taken, or did you take all of the photographs before
7 anything was moved?

8 A Well, what my procedure is when -- after doing our
9 preliminary investigation and looking at the scene, what we
10 have, I'll take pictures of everything before anything is
11 moved. And then after we start collecting evidence, I'll --
12 things may be moved as I am collecting evidence if
13 photographs have already been taken.

14 Q Have already been taken?

15 A Yes, sir.

16 Q Let me see if I can work this thing. This is a
17 photograph of the area where you found the bullet in the
18 wall, is that right?

19 A Yes, sir.

20 Q And corresponding to what you've got down here --

21 A Down here?

22 Q -- that would be five?

23 A That would be right there.

24 Q This would be five right here?

25 A Would be five. This would be video machine number five

Paul Dorman
Cross-examination by Mr. Morin

1 right there.

2 Q Right. Let me see if I can do it this way. Tell me
3 what that machine is.

4 A That one there?

5 Q Uh-huh.

6 A That's video machine number five. This -- what had
7 happened is I took another picture after I had already
8 collected that bullet from the wall. What I had to do is
9 actually move that out of the way where I could get behind
10 there to get my ladder up there where I could get on there.

11 Q Okay. Some -- and I didn't mean to get that out of the
12 way. But some of these pictures were taken after some of
13 the things were moved.

14 A Yes, sir.

15 Q This is a picture of the desk, correct?

16 A Yes, sir.

17 Q And could I?

18 A Yes, sir.

19 Q This right here is the cash register, is that right?

20 A Yes, sir, it is.

21 Q And right here on the cash register is a sign that says
22 out-of-order, is that right? I will get the actual photo.

23 A Probably was. I can't tell right now.

24 Q All right. Let me see if I can --

25 A I don't believe I collected the sign. Yes, sir.

Paul Dorman
Cross-examination by Mr. Morin

1 Q Okay. Now, when you got out there to Hillside Drive an
2 officer had the area secured, is that right?

3 A Yes, sir.

4 Q Approximately what time did you get there?

5 A On Hillside?

6 Q Uh-huh.

7 A I don't have it in my report. It was in late afternoon
8 though. The third or second shift had already come on duty,
9 so I know it was after three o'clock.

10 Q Okay.

11 A So I believe -- I want to say it was in the area of
12 around 5:00 or so.

13 Q Okay. And it is important, is it not, to make sure
14 that nothing on the scene is tampered with, touched or moved
15 or anything like that? Is that right?

16 A That's the way I like it to be, sir.

17 Q And why is that?

18 A That way nothing is disturbed. When I look at it,
19 that's the way it occurred.

20 Q Okay. Is this a photograph that you took?

21 A Yes, sir. That's one of the photographs that we took
22 of a five-dollar bill.

23 MR. MORIN: Your Honor, I would like this marked
24 Defendant's Number One.

25 THE COURT: All right, sir.

Paul Dorman
Cross-examination by Mr. Morin

1 (Photograph marked Defendant's Exhibit Number One.)

2 Q What is this at the bottom of this photograph?

3 A A cat.

4 Q A cat. Now, you got out there around 3:00, is what you
5 say, right?

6 A Well, I know it was after 3:00 because the second shift
7 had come, come on duty.

8 Q Do you know where this cat came from?

9 A I have no idea, sir.

10 Q Do you know how long it was wondering around the scene?

11 A No, sir.

12 Q Now, when you got to the store, this store also has
13 video cameras in it, does it not?

14 A Yes, sir, it does.

15 Q And it has a video monitor in the store as well.

16 A Yes, sir.

17 Q Let me see if we have a --

18 MR. WILLINGHAM: Your Honor, just for the record, the
19 state has no objection to moving Defendant's Number One into
20 evidence.

21 THE COURT: Is that what you're seeking to do?

22 MR. MORIN: I asked to put it in, and I didn't hear
23 them object.

24 THE COURT: Well, sir, you asked that it be marked for
25 identification.

Paul Dorman
Cross-examination by Mr. Morin

1 MR. MORIN: Yes, sir. I'm asking that it be moved in.
2 I apologize.

3 THE COURT: All right, sir. Without objection.

4 Q This is a photograph of the bag, is that right?

5 A Yes, sir, it is.

6 Q And the bullet was fired from what side of the counter
7 based on this bag?

8 A Looking at the bag, it was fired from the outside in.
9 I believe that's --

10 Q Well, this bag is on what part of this counter?

11 A There is the counter.

12 Q Can you tell from this photograph?

13 A That photograph was --

14 Q Okay. Let me see if this one will help.

15 A Okay. Video machines are here. That's going -- excuse
16 me. It's going from out, from the kitchen area, out to the
17 video.

18 Q Okay. Now, there is this. You found it looking over
19 here, right over here near B-five in the corner. You got an
20 alloyed jacket up in the wall --

21 A Yes, sir.

22 Q -- above the video.

23 A Yes, sir.

24 Q And then off by B-three you have got -- there was
25 another bullet hole there, is that right --

Paul Dorman
Cross-examination by Mr. Morin

- 1 A Yes, sir.
- 2 Q -- that you found?
- 3 A Went through the glass.
- 4 Q Went through the glass and ended up in the parking lot.
- 5 A Yes, sir.
- 6 Q And then you got pieces of a projectile, somebody's
- 7 potato chips, somebody's -- the Coke, is that right?
- 8 A Yes, sir.
- 9 Q How many -- so, that's three projectiles on this. When
- 10 I say this side of the counter, I mean not the kitchen side,
- 11 the customer side.
- 12 A From what I saw, at least three projectiles.
- 13 Q At least three. And then you have another round that's
- 14 just laying on the counter, is that right?
- 15 A Yes, sir.
- 16 Q Now, that was the .45 round, is that right?
- 17 A Correct, sir.
- 18 Q You have experience with firearms.
- 19 A Some, yes, sir.
- 20 Q That round couldn't have been in a .44?
- 21 A No, sir.
- 22 Q And that round obviously had not been -- this one,
- 23 unlike State's Exhibit Nine, this is a cartridge casing that
- 24 you found.
- 25 A Yes, sir.

Paul Dorman
Cross-examination by Mr. Morin

1 Q All right. Now, on this .45 caliber weapon, if I
2 understand this correctly, when this weapon is fired those
3 cartridge casings come out of that ejection area right
4 there.

5 A Correct.

6 Q But we have one bullet, as we say --

7 A Live round.

8 Q -- that has got the live round that's on the counter.
9 It didn't -- wasn't fired from this weapon.

10 A No, sir. It was not fired.

11 Q And this weapon is loaded from here.

12 A Yes, sir.

13 Q In your experience -- and you have been a police
14 officer for how long?

15 A Twenty-one years now.

16 Q In your experience how would a live round come out of
17 this weapon but not be fired?

18 A There is three ways. One, if the person is unfamiliar
19 with a firearm, if it was loaded, they jacked the gun back,
20 putting a round into the chamber, if it was already loaded,
21 one would eject out. If the magazine had been dropped, it
22 could have fallen from the magazine.

23 Q The magazine being the piece that goes in the bottom?

24 A Yes, sir.

25 Q Okay.

- 1 A Or had it stovepiped and they racked the gun back a
2 couple of times, another round could have been ejected.
- 3 Q All right. Now, when this particular firearm fires, as
4 you say, that slide goes back.
- 5 A Yes, sir.
- 6 Q And then as it comes forward, another one is coming up.
- 7 A Yes, sir.
- 8 Q And if something was to prevent that slide from doing
9 that, say, me holding it like this, would that cause it to
10 jam or could that cause it to jam? If it was fired and it
11 went back and as it came forward, I grabbed that slot --
- 12 A Would it cause it?
- 13 Q Could it cause it to stovepipe, as you were?
- 14 A Usually a stovepipe is caused by someone breaking, what
15 we call breaking, your wrist when you fired the weapon
16 causing the weapon to go up. And because of the way that
17 the slide comes back, the momentum of the slide is kind of
18 broken causing it, when it starts to slide forward, it goes
19 slower than the round is actually coming, or faster than the
20 round is coming out, and which causes it to stovepipe.
- 21 Q Right.
- 22 A Okay. To be able to grab it, I don't believe it would
23 cause it to stovepipe.
- 24 Q Would that slow it down like you talked about?
- 25 A It would slow it down.

Paul Dorman
Cross-examination by Mr. Morin

1 Q Okay. Now, the -- as we stated already, the store had
2 a video, had, I believe, four cameras in the store, is that
3 right?

4 A I believe that's how many were there.

5 Q Could you show us on that diagram where they are?

6 A I know where the V. C. R. was but the --

7 Q Okay.

8 A -- the cameras themselves, they were in corners. I
9 know that the V. C. R. monitor was in this area here. I
10 cannot remember exactly where the cameras were.

11 I know in going back, there was one if I am not
12 mistaken in the area of that middle section that was showing
13 back towards the cash register, but I can't tell you exactly
14 where. I didn't document it for specific places.

15 Q Did you take the video tape into evidence?

16 A There was no video tape.

17 Q In the machine?

18 A As far as I know, there wasn't. The machine wasn't
19 working. It was inoperable.

20 Q Which part of the machine wasn't working?

21 A The video. The whole system was turned off. It wasn't
22 working at all.

23 Q Let me show you this photograph and ask if you
24 recognize it.

25 A Yes, sir. That's the monitor of the video camera area.

Paul Dorman
Cross-examination by Mr. Morin

- 1 Q Okay. Monitor is on.
- 2 A The cameras were not working. There was no video.
- 3 MR. MORIN: I would ask to move this into evidence.
- 4 MR. GOWDY: No objections, Your Honor.
- 5 THE COURT: Without objection, it will be admitted as
- 6 Defendant's Number Two.
- 7 (Photograph marked Defendant's Exhibit Number Two.)
- 8 Q I am going to ask you that -- we are talking about this
- 9 monitor right here.
- 10 A Yes, sir.
- 11 Q It appears that there is a four-way screen on it.
- 12 A Yes, sir.
- 13 Q And you're saying that the cameras were not working.
- 14 A The video system, I guess you would say the recording
- 15 portion of the video system, was not working --
- 16 Q Okay.
- 17 A -- because we didn't have a video. That was one of the
- 18 first things I looked for, and it was not working.
- 19 Q All right.
- 20 A And then it was brought to my attention that it had not
- 21 been working.
- 22 Q All right. But I'm just trying to get --
- 23 A The camera, the cameras, itself were showing.
- 24 Q The cameras itself. That wasn't working.
- 25 A Yes.

Paul Dorman
Cross-examination by Mr. Morin

1 Q All right. But/and I believe right next to that you
2 see what appears to be some video equipment.

3 A There's a V. C. R. and some other item.

4 Q Okay. Now, having gotten that, are you saying that
5 there was no tape in the machine?

6 A There was no tape. There was no record of the
7 situation, or it was not working at all.

8 Q I understand.

9 MR. MORIN: If I may have just a moment, Your Honor.

10 THE COURT: Yes, sir.

11 (Pause.)

12 Q Officer, I understand. And I want to -- my first
13 question was, if I may go back, because I want to do this in
14 order, the video cameras were working.

15 A Correct.

16 Q The video, the display, monitor --

17 A Monitor.

18 Q -- was working.

19 A Yes, sir.

20 Q Now, there was a VCR next to that.

21 A Right.

22 Q My question, was there a tape in that machine?

23 A I don't remember a tape being in the machine.

24 Q Was there a tape in the area?

25 A The only tape that was collected was what I filmed

Paul Dorman
Cross-examination by Mr. Morin

1 myself.

2 Q Okay. One other thing about this .45. I wanted to
3 make sure I understood. And I think this -- the cartridges
4 on the -- ejected from this would go, was in this direction,
5 would go which way?

6 A Well, depending on what type weapon it is. If you are
7 looking at this particular gun, this particular gun is
8 designed to eject right -- from the gun to the right. This
9 particular gun being a .45 comes out sort of like this.

10 Q All right. So to the right and back.

11 A Right.

12 Q Okay. Now, some of these bullets, of course, were
13 copper jacketed.

14 A Yes, sir.

15 Q And some of them were aluminum jacketed.

16 A Right.

17 Q And I think there was some that didn't have a jacket,
18 is that correct?

19 A I would have to look at the lines and the guns to tell
20 exactly.

21 Q What is the significance? And I heard you say that
22 it's on there, but just so we're -- to understand, the
23 copper jacket would do what to a bullet? Once it's fired,
24 what significance would that copper have?

25 A Lead is a soft metal. The jacket is to protect the

Paul Dorman
Cross-examination by Mr. Morin

1 lead, to keep it in the design that it was supposed to go in
2 as it's going out --

3 Q Okay.

4 A -- instead of flattening out. It helps protect it on
5 impact. Depending on the design of the bullet, some bullets
6 are designed so that they expand on impact. Some are not.

7 Q And that, that type of jacket, would allow, say, a
8 bullet to hit a video machine and go through a window and
9 hit a car and still hold its --

10 A It could, yes, sir.

11 Q Okay. Let me ask you about this photograph right here.
12 This is one of the .45 cartridges, is that correct?

13 A Yes, sir, it is.

14 Q Could you show us where this picture is located on this
15 diagram?

16 A There is the sink area. It is right in that area right
17 there.

18 Q Okay. Thank you.

19 Now, when you testified that you got 56 blood
20 samples --

21 A Yes, sir.

22 Q -- was that just from the store, or did that include
23 blood samples taken out at Hillside?

24 A It was 56 samples in all. Fifty-one of those samples
25 from the store, the remaining five from the car.

Paul Dorman
Cross-examination by Mr. Morin

1 Q Okay. When you arrived on the scene here which
2 officers or which people involved in the case were on the
3 scene, do you recall?

4 A I remember Detective Denton and Investigator Denton,
5 Dedmon, were there at the scene. There was a patrol
6 sergeant that I can't remember who it was and at least one
7 other patrol officer that I didn't even talk to.

8 Q Was Ken Bishop with the coroner's office there?

9 A I believe the coroner was already there.

10 Q Okay. And, once again, as I pointed out as I objected,
11 there was a video machine moved while you climbed up to get
12 that fragment.

13 When you were out on Hillside Drive and you took some
14 pictures of the inside of the truck was there -- let me just
15 show them to you. That would be the best way to do it.

16 Okay. Showing you these photographs of the inside of
17 the truck --

18 A Yes, sir.

19 Q -- are there some where you took a picture and moved
20 some of it, or were all of these taken before anything was
21 moved? Can you tell from looking at them?

22 A These two photographs here was when we first got there.
23 We took the photographs of where everything was located.

24 Q Okay.

25 A We noticed that the knife was right under this area

Paul Dorman
Cross-examination by Mr. Morin

1 right here.

2 Q Let me put it over here. All right. We will do one at
3 a time. So this photograph --

4 A Nothing was moved inside. They had not even opened the
5 doors yet. The window was down. We took a photograph from
6 the left side into the vehicle, and this is the way it was
7 setting when we got there.

8 Q Okay. And then --

9 A And this picture here is the same thing showing it in
10 here. Right in this area there is a stack of five-dollar
11 bills right here and a rubber band and two pieces of
12 cardboard sticking out. Right in that area is where the
13 knife was located at.

14 So, to be able to depict the knife, we moved it out and
15 showed it basically where the area was where it was located.

16 Q Okay. Now, the blood samples that you have, had taken,
17 you sent them all to SLED, is that right?

18 A I believe all of them were sent to SLED.

19 Q Okay. And that was to be tested.

20 A Correct.

21 Q And did you write a form of some kind asking which
22 tests to be run?

23 A The actual SLED submission form was written by an
24 evidence officer when -- prior, before it was taken down.

25 Q Okay.

Paul Dorman
Cross-examination by Mr. Morin

1 A And as usual, D. N. A. analysis and that type --

2 Q Okay.

3 A -- was asked. In fact, it says D. N. A. analysis.

4 Basically, they would know we needed a D. N. A. analysis
5 done.

6 Q So they were. Officer Dorman, I would just like to
7 show you. Are these reports, property reports, you filled
8 out?

9 A Yes, sir, they are.

10 Q Okay. And I am not sure, but, well, just this seems to
11 indicate quite a few more than 58 blood swabs. You can look
12 at that for a moment.

13 A If you'll look over here, this is if you look to the
14 left of the sheet.

15 Q Yes, sir.

16 A It says item number --

17 Q Okay.

18 A Those are the item numbers of each piece of evidence.
19 If you look over to the right side, you will notice there's
20 numbers over to the right. And they correspond with the 58
21 samples, or 50.

22 THE COURT: You need to speak up, please.

23 A Fifty-six samples of blood.

24 Q Well, the reason I ask is because I see, oh, that's --

25 A You see --

Paul Dorman
Redirect examination by Mr. Willingham

1 Q Blood sample swabs.

2 A Number 38.

3 Q Right.

4 A That was the two -- 38. And if you go down through
5 here you'll find there's actually --

6 THE COURT: Gentlemen, you-all are carrying on a
7 conversation between yourselves and the court reporter is
8 having a difficult time hearing. It is important for her to
9 hear.

10 MR. MORIN: Yes, sir.

11 Q You have pointed out several pictures where blood was
12 found.

13 A Yes, sir.

14 MR. MORIN: That's all I have.

15 THE COURT: Redirect.

16 MR. WILLINGHAM: May it please the Court, Your Honor.
17 Very brief.

18 REDIRECT EXAMINATION

19 BY MR. WILLINGHAM

20 Q I am going to pull out two exhibits. Mr. Dorman, I
21 just want to make sure we are clear on this .45, State's
22 Exhibit Number Three. This is the gun that was found on
23 Highway Nine, right?

24 A The .45, yes, sir.

25 Q Not found in the store.

Paul Dorman
Recross-examination by Mr. Morin

1 A Not found in the store.

2 Q State's Exhibit Number Thirteen is the bullet that was
3 found out in the parking lot, right?

4 A Correct, sir.

5 Q And State's Exhibit Number Twenty is the one that was
6 found in the corner at the video poker machines, right?

7 A Yes, sir.

8 Q And, Mr. Dorman, I know you have been in law
9 enforcement for a long time, and I don't want to offend you
10 in any way, but you are not certified by SLED as a firearms
11 expert, are you?

12 A No, sir, I am not.

13 Q And questions about the operation of firearms would
14 probably be left better to a firearms expert, wouldn't you
15 agree?

16 A Yes, sir.

17 Q Thank you, Mr. Dorman. Answer any questions they may
18 have on recross.

19 THE COURT: Recross.

20 RECROSS-EXAMINATION

21 BY MR. MORIN

22 Q During your collection of these weapons did you
23 ascertain ownership of any of them as part of your
24 involvement in this case?

25 A I learned later the weapons belonged inside the store.

Hugh Murphy
Direct examination by Mr. Willingham

1 Q Thank you.

2 THE COURT: Thank you, sir. You may step down.

3 MR. WILLINGHAM: Your Honor, we ask that he be excused.

4 THE COURT: Without objection, he is excused.

5 (Whereupon, the witness was excused.)

6 MR. WILLINGHAM: The state would call Hugh Murphy very
7 briefly.

8 HUGH MURPHY, having been first duly
9 sworn, testified as follows:

10 THE COURT: Give us your name, please, and spell your
11 last name.

12 THE WITNESS: Hugh Murphy.

13 THE COURT: Spell your last name.

14 THE WITNESS: M-U-R-P-H-Y.

15 DIRECT EXAMINATION BY MR. WILLINGHAM

16 Q Mr. Murphy, it is obvious from your uniform you work
17 for the sheriff's office.

18 A I do.

19 Q And how long have you been there?

20 A Fourteen and a half years.

21 Q What do you do for them?

22 A I'm a forensic I. D. officer.

23 Q Okay. Forensic investigator?

24 A Yes, sir.

25 Q And were you working September the 16th, 1999?

Hugh Murphy
Direct examination by Mr. Willingham

1 A Yes, I was.

2 Q And were you asked to attend the autopsy of James
3 Mahoney?

4 A I was.

5 Q As part of that autopsy did you complete a gunshot
6 residue kit on the victim?

7 A I did.

8 Q Showing you State's Exhibit Ninety-nine, I ask if you
9 recognize that.

10 A That is the test I ran.

11 Q Did you turn that into evidence?

12 A I turned it to Paul Dorman.

13 Q Okay. And State's Exhibit Number Ninety-seven. Tell
14 me what that is.

15 A That's the bottle containing the projectile that I
16 received from Dr. Wren at the autopsy.

17 Q Okay. Who did you give that to?

18 A Paul Dorman.

19 MR. WILLINGHAM: For the record, Your Honor, these two
20 exhibits are already in evidence.

21 THE COURT: All right, sir.

22 Q Show you State's Exhibit Number Ninety-four. Tell me
23 what that is.

24 A It's a bag containing a pair of blue jeans and a black
25 belt that I took from Dr. Wren at the autopsy.

Hugh Murphy
Direct examination by Mr. Willingham

1 Q The autopsy of James Mahoney?

2 A Of James Mahoney.

3 Q And did you collect these into evidence?

4 A I did.

5 Q Did you place them into evidence?

6 A Yes, I did.

7 MR. WILLINGHAM: Your Honor, at this time the state
8 would move State's Exhibit Ninety-four into evidence.

9 THE COURT: Without objection, it will be admitted.

10 (Pair of Levi jeans marked State's Exhibit Number
11 Ninety-four.)

12 Q I show you State's Exhibit Number Ninety-five. Tell me
13 what that is.

14 A It's a blue and white striped shirt that I also
15 collected at the morgue.

16 Q From the victim, James Mahoney?

17 A It was his.

18 MR. WILLINGHAM: Your Honor, at this time I move
19 State's Exhibit Number Ninety-five into evidence.

20 THE COURT: Without objection, it will be admitted.

21 (Blue and white striped shirt marked State's Exhibit
22 Number Ninety-five.)

23 Q Thank you, Mr. Murphy for coming. Would you answer any
24 questions the defense attorney or the Court may have for
25 you?

Hugh Murphy
Cross-examination by Mr. Morin

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. MORIN

4 Q That gunshot residue kit, you sent that to SLED, is
5 that right, for analysis?

6 A I turned it over to Paul Dorman.

7 Q Okay. Thank you.

8 MR. MORIN: That's all I have.

9 THE COURT: Anything further, Solicitor?

10 MR. WILLINGHAM: No, sir, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 Ladies and gentlemen of the jury, we have been in here
13 now for about an hour and a half. We are going to take a
14 short break at this time.

15 While you're in the jury room, please do not discuss
16 this case among yourselves. We will get you back in just a
17 few minutes.

18 The jury may retire. Everyone else remain seated,
19 please.

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

22 THE COURT: Insofar as planning for the rest of the
23 day, I have told the jury custodians that we will stop
24 between 5:30 and 6:30. So, whenever we have reached an
25 appropriate point for us to break for the day, I'm going to

Hugh Murphy
Cross-examination by Mr. Morin

1 kinda leave that up to you-all's control as to how you
2 manage your case, but just keep that in mind.

3 MR. GOWDY: Yes, sir, Your Honor.

4 THE COURT: All right. Let's take a short break, about
5 ten minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. Is the state ready to continue,
8 Solicitor?

9 MR. GOWDY: Yes, sir, Your Honor.

10 THE COURT: And the defendant is ready, gentlemen?

11 MR. MORIN: Yes, sir.

12 THE COURT: And lady. I apologize to you, Ms. Johnson.

13 MS. JOHNSON: That's okay, Your Honor.

14 THE COURT: All right. Let's bring our jury back.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Thank you very much, Madam Foreperson and
18 ladies and gentlemen.

19 Next witness, please.

20 MR. GOWDY: May it please the Court, Your Honor, the
21 state would call Keith Fowler.

22 KEITH FOWLER, having been first
23 duly sworn, testified as follows:

24 THE COURT: State your name for the record, and spell
25 your last name, sir.

Keith Fowler
Direct examination by Mr. Gowdy

1 THE WITNESS: Keith Walter Fowler, F-O-W-L-E-R.

2 THE COURT: Thank you very much.

3 MR. GOWDY: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. GOWDY

5 Q Mr. Fowler, could you introduce yourself to the jury?
6 Tell them where you work. Tell them how long you've lived
7 in Spartanburg.

8 A I'm Keith Walter Fowler. I work at Nikki's Speedy
9 Mart. I've lived in Spartanburg all of my life.

10 Q Now, in addition to working at Nikki's, do you have
11 some ownership interest in it or are you related to the
12 person that does?

13 A My wife's the owner.

14 Q Keith, I am going to get you, if you would, to speak
15 up. You're going to feel like you are yelling at me, but I
16 want the last two jurors to be able to hear what you say.

17 A Yes. My wife's the owner.

18 Q How long have you and your wife been involved with
19 Nikki's? Is your wife's name, in fact, Nikki?

20 A No. It's a nickname. Her name is Nanette. We have
21 been there since May of '95.

22 Q And let's go back to 1999. Give the ladies and
23 gentlemen of the jury a sense of what kind of store Nikki's
24 was in 1999. What did you-all sell?

25 A It was more of a restaurant. We had went to more of a

Keith Fowler

Direct examination by Mr. Gowdy

1 restaurant type business then, hot dogs, hamburgers and
2 stuff like that.

3 Q Did you also have some video machines?

4 A Yes, sir. We had video poker machines.

5 Q Mr. Fowler, what shift did you work? Did you have a
6 traditional shift that you worked at Nikki's?

7 A Yes, sir. I was generally in the morning shift, and
8 then I came back in the evening from, anywhere from, 7:30
9 till nine o'clock for the shift change.

10 Q And how late were you-all open?

11 A It was 24-hour service.

12 Q Did you have any firearms or handguns that you kept on
13 the premises at Nikki's?

14 A Yes, sir, I did.

15 Q Tell the jury about those handguns.

16 A I had a .32 Magnum and a .45 caliber semiautomatic.

17 Q Were those your personal guns?

18 A Yes, sir.

19 Q And where would you keep the .45?

20 A I kept it -- there was a desk beside the -- that we
21 kept the cash register on. I kept it on the right-hand side
22 of the desk covered with a white towel.

23 Q I want you to use this. It works right like that.

24 Point out for the jury where you kept the .45.

25 A Right up under there. The counter protruded over

Keith Fowler
Direct examination by Mr. Gowdy

1 the counter.

2 Q Any other guns other than the .45?

3 A A .32 Magnum, and it was right up under that counter
4 there. The counter always protruded out over it.

5 Q And did you purchase those guns?

6 A Yes, sir.

7 Q And were they your guns?

8 A Yes, sir.

9 Q Do you know whether or not James Mahoney had a gun or
10 carried a gun at work?

11 A Yes, sir. James had a .44 Magnum. I think you called
12 it a Bulldog Revolver.

13 Q How do you know that he had one? Did you see it?

14 A Yes, sir. I had seen it before.

15 Q And do you know where he kept it?

16 A When he first came in, he kept it up under the desk in
17 a holster.

18 Q Later on did he keep it somewhere else?

19 A Whenever he was out by himself stocking or something
20 like that, he would put it on his person, yes, sir.

21 Q And how long had James Mahoney worked for you and
22 Mrs. Fowler?

23 A It was late in the summer of 1996.

24 Q What shift did he work?

25 A The third shift.

Keith Fowler
Direct examination by Mr. Gowdy

1 Q Which would have begun when?

2 A He generally started around nine or 9:30 in the evening
3 until around 8:00 in the morning.

4 Q Did he work the third shift because that's all you had
5 available or was that his preference?

6 A That was his preference.

7 Q Mr. Fowler, how tall was James Mahoney?

8 A James was about the same height as I am or maybe a half
9 an inch shorter. I'm around 5' 9" and a half, somewhere
10 around in there.

11 Q Can I get you to come down for a second and step off
12 that ledge and come down here?

13 A Yes, sir.

14 (Whereupon, the witness left the stand.)

15 Q Where would he come up to on you?

16 A He was about the same height as I am.

17 Q And how much did he weigh?

18 A Maybe 130 or 140 pounds. He was a small man.

19 Q I want you to take your seat back again.

20 (Whereupon, the witness returned to the stand.)

21 Q Mr. Fowler, do you remember anything distinctive about
22 Mr. Mahoney's hands?

23 A Yes, sir. Mr. Mahoney had arthritis. And his hands,
24 his fingers, were curled up. And he had a hard time using
25 his hands sometimes.

Keith Fowler
Direct examination by Mr. Gowdy

1 (Five photographs marked State's Exhibit Number
2 Thirty-eight for Identification.)

3 Q Let me show you, Mr. Fowler, what has been marked for
4 identification purposes as State's Exhibit Thirty-eight. It
5 is a series of five photographs, and ask you whether or not
6 you recognize those five photographs.

7 A One at a time? I mean, or just do I recognize them?

8 Q Yes. I am just going to ask you if you recognize them.

9 A Yes, sir. This is the store. Yes, sir.

10 Q Those are pictures of your store?

11 A Yes, sir.

12 MR. GOWDY: Your Honor, we would move State's
13 Thirty-eight inclusive of one through five into evidence.

14 THE COURT: Without objection?

15 MR. MORIN: No objection.

16 THE COURT: Without objection, they are admitted.

17 (Five photographs marked State's Exhibit Number
18 Thirty-eight.)

19 MR. GOWDY: Your Honor, could I request permission to
20 display them to the jury through the overhead projector?

21 THE COURT: Absolutely.

22 MR. GOWDY: Thank you, Your Honor.

23 (Pause.)

24 Q Mr. Fowler --

25 A Yes, sir.

Keith Fowler

Direct examination by Mr. Gowdy

1 Q -- do you see the out-of-order sign right there?

2 A Yes, sir.

3 Q What was that out-of-order sign on?

4 A It was just laying there at the cash register. It was
5 in case one of the video poker machines went out. We would
6 hang it on the machine.

7 Q Did that mean that the cash register was out of order?

8 A No, sir; no, sir. It was working.

9 Q Can you show the ladies and gentlemen of the jury where
10 you kept the .32?

11 A Right, right back up under there.

12 Q And how about the .45?

13 A It would have been over on the other side of the cash
14 register in the corner over there.

15 Q Did you have anything covering up the .45?

16 A Yes, sir.

17 Q What?

18 A A white, like a white dish towel. We get them from a
19 service company and wash the dishes and what not with them,
20 and it was covered with that.

21 Q How about the .32? Would it have been visible?

22 A Well, it had -- those containers right there were in
23 front of it.

24 Q Using this picture as a reference, Mr. Fowler, show the
25 ladies and gentlemen of the jury where the .45 would be

Keith Fowler
Direct examination by Mr. Gowdy

1 kept.

2 A It would have been right on the other side of that
3 register, right past where the light is shining, right over
4 there covered with a white towel.

5 Q Underneath the cash register it looks like there are
6 two drawers that are partially opened.

7 A Yes, sir.

8 Q What would those be?

9 A The top drawer right there is where we kept a vinyl bag
10 that we kept the video poker money, and money to make change
11 with, in.

12 Q And what color was that blue vinyl bag?

13 A Blue.

14 Q I am sorry. I am not supposed to give you the answer.
15 What color was the vinyl bag?

16 A It was blue.

17 MR. GOWDY: I apologize, Your Honor.

18 Q What's in that picture, Mr. Fowler?

19 A That's the .32 right there.

20 Q I'm going to show you a picture and ask you whether or
21 not you recognize something, whether it belongs to your
22 store or not.

23 A Yes, sir.

24 Q Do you see the meat cleaver with the item that is at
25 the feet of James?

Keith Fowler
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q Can you tell the ladies and gentlemen of the jury
3 whether or not that object belonged to your store?

4 A No, sir. It did not.

5 Q What makes you so certain, Mr. Fowler?

6 A We had utensils that we used to prepare the onions and
7 tomatoes, and they were regular household knives. That's
8 the only knives that we had there.

9 Q Mr. Fowler, did you ever hear James Mahoney have a
10 verbal confrontation with a customer?

11 A No, sir.

12 MR. MORIN: Objection, Your Honor.

13 THE COURT: Objection is overruled.

14 Q Mr. Fowler, did you ever hear James Mahoney have a
15 verbal confrontation with a customer?

16 A No, sir, I did not.

17 Q Did you ever see him have a physical confrontation --

18 A No, sir.

19 Q -- with a customer?

20 A No, sir.

21 Q Mr. Fowler, do you recognize the vinyl bag in that
22 picture?

23 A From what I can tell of the picture there, yes, sir,
24 that's the bag that was in the store.

25 Q Tell us where that bag was kept.

Keith Fowler

Direct examination by Mr. Gowdy

1 A It was kept in the first drawer where that desk was,
2 the top drawer right there.

3 Q Do those drawers open and close easily?

4 A The bottom one didn't, but the top one. Well, both of
5 them, you had to pull them pretty hard, yes, sir. You sure
6 did.

7 Q Mr. Fowler, when you opened and closed the door at
8 Nikki's to come and go, does anything happen? Is any sound
9 made?

10 A We have a little buzzer that went off to let you know
11 when the door opened.

12 Q Let me show you what has been introduced as State's
13 Exhibit Three and ask you whether or not you recognize that.

14 A Yes, sir. That's the .45 that I had at the store.

15 Q Let me get you to speak up where the jury can hear you.
16 Whose gun was that, Mr. Fowler?

17 A That was mine. Yes, sir.

18 Q On September the 16th or September the 15th, 1999, when
19 did you leave Nikki's for the last time?

20 A It was between 9:00 or 9:30 that evening.

21 Q Had James already got to work?

22 A Yes, sir.

23 Q Do you count the money or look at the money before you
24 leave?

25 A My wife does, yes, sir.

Keith Fowler
Direct examination by Mr. Gowdy

1 Q And do you have a security system, for lack of a better
2 word, at Nikki's?

3 A Yes, sir.

4 Q To the best of your recollection was it operable on
5 September the 15th and 16th?

6 A Yes, sir, it was.

7 Q Do your employees have to affirmatively do something to
8 activate the system?

9 A Yes, sir.

10 Q What?

11 A You had to turn it on.

12 Q Do you know whether all of your employees turned it on
13 as a matter of custom or habit?

14 A Most of the time, yes, sir, they did.

15 Q Do you know whether or not Mr. Mahoney usually turned
16 it on?

17 A Yes, sir, he usually did.

18 Q Did you ever find a video tape from the night or the
19 early morning of September 16, 1999?

20 A No, sir.

21 Q Do you have any evidence that the security system was
22 actually working when this incident took place or that there
23 was a tape to play?

24 A There was a tape in, but I don't think it was in play.

25 Q Mr. Fowler, I think Mr. Mahoney worked for you for

Keith Fowler
Direct examination by Mr. Gowdy

1 about three years.

2 A Yes, sir.

3 Q In that three-year period did you ever see him touch
4 your .45?

5 A No, sir.

6 Q Did you ever see him touch the .32?

7 A No, sir. Excuse me. Yes, he did on --

8 MR. MORIN: Your Honor, object to this. I need to
9 approach.

10 THE COURT: All right, sir.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 Q Strike the question about the .32. Did you ever see
14 him touch the .45?

15 A Actually, I never.

16 Q Actually, strike both of the questions.

17 A Okay.

18 Q Mr. Fowler, did you ever -- how many employees did you
19 and your wife have at Nikki's?

20 A Two.

21 Q James, and Ann Yarbrough?

22 A Yes, sir.

23 Q Did y'all ever have training sessions? Do you have a
24 policies and procedures manual --

25 A No, sir.

Keith Fowler
Direct examination by Mr. Gowdy

1 Q -- on how to respond or react in face of a robbery?

2 A We had discussed it, you know, not a training.

3 Q Just, just if you would, just answer yes or no without
4 the explanation for evidentiary reasons. Just answer yes or
5 no.

6 A No, no training, no, sir.

7 Q Okay.

8 MR. GOWDY: Your Honor, can we approach?

9 THE COURT: Yes, sir.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 Q Let me talk to you for a second about the lighting in
13 your store. Have you been in your store after dark?

14 A Yes, sir.

15 Q Can you tell the ladies and gentlemen of the jury how
16 well lighted or lit the area in front of the counter would
17 have been?

18 A In front of the counter was lit very well.

19 Q How about the area back where the five video games
20 were?

21 A It was, it was darker in that area. The light was
22 lower over there.

23 Q I want you to act like you were behind the counter at
24 the Nikki's that used to be on 221 in September of 1999.

25 A Yes, sir.

Keith Fowler
Cross-examination by Mr. Morin

1 Q You're behind the counter. And I am going to back up
2 to where I would be if I was playing the four -- from the
3 second-to-the-last-on-the-end video machine on the back
4 wall. Okay?

5 A Okay. Say somewhere about right in there.

6 Q Right here?

7 A Yes, sir.

8 Q Okay. Mr. Fowler, thank you very much for your
9 testimony. Please answer any questions His Honor or the
10 defense attorney may have for you.

11 A Yes, sir.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. MORIN

15 Q Mr. Fowler, did this tire iron belong to the store?

16 A No, sir.

17 Q Prior to September the 16th had you ever seen it?

18 A No, sir.

19 Q When you came to the store on the 16th and the police
20 showed you the .44 that they had found -- or did you see it?

21 A No, sir.

22 Q You told them that Jamie had carried a .44.

23 A Right.

24 Q And he carried it right back here. Is this where he
25 usually kept it?

Keith Fowler
Cross-examination by Mr. Morin

- 1 A At times, he did.
- 2 Q Okay. Now, you also told them that you owned a .45
- 3 that you kept there, just as you testified to, right?
- 4 A Yes, sir.
- 5 Q And you also told them that .32, the photograph that
- 6 Mr. Gowdy showed you, that was yours.
- 7 A Yes, sir.
- 8 Q And both of these firearms, from your description, if I
- 9 was on this side of the counter, the customer side --
- 10 A Yes, sir.
- 11 Q -- would not be visible from my side.
- 12 A No, sir.
- 13 Q Now, let me ask you this about the video poker machine
- 14 if I may. If I or if someone is playing one of those video
- 15 poker machines and wins back in '99, what did -- did they
- 16 receive anything?
- 17 A Yes, sir. We had a minimum or a maximum pay out of
- 18 \$125 --
- 19 Q Okay.
- 20 A -- that you could pay them.
- 21 Q And the money for the video poker was kept in the blue
- 22 bag in the top drawer.
- 23 A Yes, sir.
- 24 Q Now, as far as the video security system, what have
- 25 you, is it your policy to just reuse the tape? I mean, did

Keith Fowler
Cross-examination by Mr. Morin

1 y'all have separate tapes or did you just record over and
2 over?

3 A We had several tapes, but we did record over it.

4 Q After a while they --

5 A Yeah. They get --

6 Q And as far as you know at 9:30 when you were there, is
7 it your testimony there was a tape?

8 A There was a tape in, but it wasn't on at that time.

9 Q Okay. So, if that tape in all likelihood, even if it
10 wasn't on then, would have had something on it from previous
11 times that the record button had been pushed.

12 A Yes, sir.

13 MR. MORIN: Just one moment, Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q Thank you very much, Mr. Fowler.

17 A Thank you.

18 MR. GOWDY: I have nothing on redirect, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 Next witness.

21 MR. GOWDY: May it please the Court, Your Honor, the
22 state would call Nikki Fowler.

23 MR. MORIN: May we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Bench conference held off the record in the presence

Nikki Fowler

Direct examination by Mr. Gowdy

1 of the jury but out of the hearing of the jury.)

2 NIKKI FOWLER, having been first
3 duly sworn, testified as follows:

4 THE COURT: Ma'am, please state your name, and spell
5 your last name.

6 THE WITNESS: Nanette S. Fowler.

7 DIRECT EXAMINATION BY MR. GOWDY

8 Q Good afternoon, Mrs. Fowler. I'm going to get you to
9 speak up. I want you to -- you are going to think you are
10 yelling at me, but that's okay. I want the last two folks
11 in the jury box to be able to hear you. Okay?

12 A Okay.

13 Q You are going to have to do better than that.

14 A Okay.

15 Q All right. You said your name is Nanette Fowler.

16 A That's right.

17 Q Do you have a nickname?

18 A Yes. It's Nikki.

19 Q Is there a store named after you in Spartanburg?

20 A Yes.

21 Q Where is that store located?

22 A On Whitney Road.

23 Q Is that store still in existence?

24 A We're not at the same location.

25 Q But there is still a store called Nikki's.

Nikki Fowler
Direct examination by Mr. Gowdy

- 1 A Yes. That's right.
- 2 Q And today in 2001, what do you-all sell at Nikki's?
- 3 A We sell food, cigarettes, soft drinks, beer.
- 4 Q Back in 1999 were you a similar type store?
- 5 A Yes.
- 6 Q And how many employees did you have back in 1999?
- 7 A There was three altogether.
- 8 Q Can you tell the jury? Again, I hate to keep telling
- 9 you to yell at me, but I really need you to speak up.
- 10 A There was three.
- 11 Q Who were those three?
- 12 A A James Mahoney, Joey Yarbrough and Ann Yarbrough.
- 13 Q And how long had James Mahoney worked for you in 1999?
- 14 When did he start with you?
- 15 A I believe it was late in the summer of ninety -- '96.
- 16 Q What did he do for you at Nikki's, Mrs. Fowler?
- 17 A He worked at night.
- 18 Q Third shift?
- 19 A On the third shift.
- 20 Q What time would he come on?
- 21 A It was usually around between 9:00 and 9:30.
- 22 Q And y'all were opened 24 hours a day.
- 23 A That's right.
- 24 Q Was James a big man or was he a small man?
- 25 A He was small.

Nikki Fowler
Direct examination by Mr. Gowdy

1 Q And how much did he weigh, Mrs. Fowler?

2 A I don't know. I would guess about 130 or 140 pounds,
3 if that much.

4 Q Was anything distinctive that you remember about his
5 hands?

6 A They were crippled like with arthritis.

7 Q How about his eyesight? Anything about his eyesight
8 that you remember?

9 A I know he wore glasses, and he had trouble, you know,
10 seeing. He used a magnifying glass to read.

11 Q Mrs. Fowler, did you ever see James have a verbal, or
12 be verbally aggressive, towards a customer?

13 A No.

14 MR. MORIN: Objection to character.

15 THE COURT: Objection is noted. It's overruled.

16 Q Did you ever see James be verbally aggressive towards a
17 customer?

18 A No.

19 Q Did you ever see him be physically aggressive towards a
20 customer?

21 A No, sir.

22 Q As part of the work at Nikki's in 1999 was there some
23 food preparation involved?

24 A Well, he made food, but he --

25 Q Was that part of the business of the store?

Nikki Fowler
Direct examination by Mr. Gowdy

- 1 A Yeah.
- 2 Q Did y'all have kitchen utensils, knives, forks?
- 3 A Yeah.
- 4 Q Let me show you State's Exhibit Eighty-three and ask
5 you whether or not you have ever seen that.
- 6 A I have never seen that.
- 7 Q Did that belong to Nikki's in September of 1999?
- 8 A No.
- 9 Q Was there a video or security recording system at
10 Nikki's in 1999?
- 11 A Yes, there was.
- 12 Q Did you use it?
- 13 A Every now and again we would turn it on. You had to
14 turn it on yourself. The daytime, we really never -- we
15 didn't run it too much.
- 16 Q Is it fair to say that it was operational?
- 17 A Yes.
- 18 Q But you had to take a step to operate it.
- 19 A That's right.
- 20 Q You had to push a button.
- 21 A Yes.
- 22 Q Did you always push that button?
- 23 A Not always.
- 24 Q Your testimony, I believe, Mrs. Fowler, is that State's
25 Exhibit Number Eighty-three, you have never seen before, is

Nikki Fowler
Cross-examination by Mr. Morin

1 that right?

2 A I have never seen it.

3 Q Never seen this meat cleaver that has been described?

4 A I've never seen any knife like that.

5 Q Let me ask you one more question, Mrs. Fowler. With
6 your employees, and you can give me just a yes or no answer,
7 okay -- with your employees did you and Mr. Fowler ever have
8 training or policy and procedure on how to deal with folks
9 that may want to rob you?

10 A No.

11 Q Thank you, Mrs. Fowler. Please answer any questions
12 the Court or the defense may have for you.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. MORIN

16 Q Mrs. Fowler, in the fall of '99, September,
17 thereabouts, Nikki's was in the process of moving to its new
18 location or had already begun plans to do so, is that right?

19 A Yes, that's right.

20 MR. MORIN: That's all I have.

21 THE COURT: Redirect.

22 MR. GOWDY: Nothing on redirect, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down.

24 Next witness.

25 MR. GOWDY: May it please the Court, Your Honor, the

Ann Yarbrough
Direct examination by Mr. Gowdy

1 state would call Ann Yarbrough.

2 ANN YARBROUGH, having been first
3 duly sworn, testified as follows:

4 THE COURT: Ma'am, please state your name for the
5 record, and spell your last name.

6 THE WITNESS: And Marie Yarbrough, Y-A-R-B-R-O-U-G-H.

7 MR. GOWDY: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MR. GOWDY

9 Q Good afternoon, Mrs. Yarbrough. I'm going to get you
10 to -- I want you to speak loud enough where the last bailiff
11 back here and the last two jurors can hear you. Okay. We
12 are going to have to do better than that. Okay?

13 A Okay.

14 Q All right. I want you to tell the ladies and gentlemen
15 of the jury where you work and how long you've been there.

16 A I work at Nikki's. I've been there since '96.

17 Q All right. You're going to feel like you're yelling at
18 me, Mrs. Yarbrough, but I'm going to have to get you --

19 THE COURT: Yes, ma'am. You're going to have to pick
20 up the tempo a little bit. If you'll speak up, that
21 microphone will pick you up, but you need to try to do it
22 just a little bit like me.

23 A I work at Nikki's, and I've been there since 1996.

24 Q And what are some of your responsibilities and duties
25 at Nikki's, Ms. Yarbrough?

Ann Yarbrough
Direct examination by Mr. Gowdy

1 A I run the register, cook and clean.

2 Q And what kind of business is Nikki's? What do you-all
3 sell there?

4 A Food, beer, drinks.

5 Q And are you known for your hot dogs?

6 A Yeah. That's most -- that's our main --

7 Q What shift did you work back in September of 1999,
8 Ms. Yarbrough?

9 A Two days a week I worked from 10:00 till 8:00; and
10 three, I worked from 3:00 till 8:00.

11 Q Did you know a fellow employee by the name of James
12 Mahoney?

13 A Yes, sir.

14 Q Did y'all's paths ever cross? Did you ever run into
15 one another?

16 A On Saturdays we were there at the same time. And then
17 occasions like weddings and stuff that we went to together
18 as friends.

19 Q Would your shift, obviously, end before his began?

20 A Yes, sir.

21 Q Can you tell the ladies and gentlemen of the jury some
22 of the things that you did at the end of your shift?

23 A The end of my shift, I cleaned everything, washed
24 everything up and prepared stuff for James so he wouldn't
25 have to do it.

Ann Yarbrough
Direct examination by Mr. Gowdy

1 Q All right. When you say you cleaned everything and
2 washed everything up, tell the jury what you mean by cleaned
3 and washed everything.

4 A I washed all of the utensils and dishes and everything
5 we had used for that day.

6 Q Just because I walk closer to you, I still want you to
7 keep your voice up. Okay. You cleaned all of the utensils?

8 A Yes, sir.

9 Q Let me show you what has been introduced as State's
10 Exhibit Eighty-three and ask you whether or not you have
11 ever seen that utensil.

12 A No.

13 Q Are you certain?

14 A We don't have anything with wooden handles.

15 Q That was not part of Nikki's utensils?

16 A No.

17 Q Ms. Yarbrough, you said you would chop things up for
18 James.

19 A Yes.

20 Q Why would you chop things up for James?

21 A James had a problem with his hands. I'm not sure what
22 it is, but it was hard for him to chop anything. His hands
23 were kind of drawn, so we did everything for him so he
24 wouldn't have to do it.

25 Q If you were standing behind the counter at Nikki's and

Ann Yarbrough
Direct examination by Mr. Gowdy

1 I wanted to purchase a Diet Coke and put it right there and
2 you wanted to bag it up, where would you have to go to get a
3 paper bag?

4 A I would have to turn to the right and reach up under
5 the cabinet or the counter.

6 Q If I wanted a pack of cigarettes from you,
7 Ms. Yarbrough, where would you -- or what you have to do or
8 where would you have to go to get me a pack of cigarettes?

9 A They were up above the register. You have to reach up
10 to get them.

11 Q Could you reach up without getting on top of anything?

12 A I could.

13 Q Was there a video or a security system at Nikki's in
14 1999?

15 A Yes.

16 Q Did you activate it?

17 A No.

18 Q You never turned it on?

19 A No.

20 Q Ms. Yarbrough, were you ever in the store at the same
21 time James was in the store?

22 A Yes.

23 Q Did you ever see him have a verbal -- be verbally
24 aggressive towards a customer?

25 A No.

Sid Devaul
Direct examination by Mr. Willingham

1 MR. MORIN: Objection to character.

2 THE COURT: Note your action. It is overruled.

3 Q Did you ever see him be verbally aggressive towards a
4 customer?

5 A No.

6 MR. GOWDY: Your Honor, I don't have any further
7 questions from Ms. Yarbrough.

8 Q Please answer any questions the Court or Mr. Morin may
9 have for you.

10 THE COURT: Cross-examination.

11 MR. MORIN: No, sir. I don't have any questions.

12 THE COURT: Thank you, ma'am. You may step down.
13 Next witness.

14 MR. WILLINGHAM: Your Honor, the state calls Sid
15 Devaul.

16 SID DEVAUL, having been first duly
17 sworn, testified as follows:

18 THE COURT: Please state your name for the record, and
19 spell your last name, sir.

20 THE WITNESS: My name is Sidney R. Devaul, D-E-V-A-U-L.

21 MR. WILLINGHAM: I beg the Court's indulgence.

22 DIRECT EXAMINATION BY MR. WILLINGHAM

23 Q Mr. Devaul, where do you work?

24 A I work at Kohler Company.

25 Q And what do you do for them?

Sid Devaul

Direct examination by Mr. Willingham

- 1 A I'm the manager of human resources.
- 2 Q Is that like a personnel director?
- 3 A That's the same thing.
- 4 Q Okay. And do you maintain custody of the records of
- 5 employees employed by Kohler Company?
- 6 A Yes, I do.
- 7 Q Do you have such a record on Richard Bernard Moore?
- 8 A Yes, I do.
- 9 Q Did Mr. Moore work for Kohler?
- 10 A Yes.
- 11 Q What were his dates of employment?
- 12 A He began on July the 19th, 1999. And his last day he
- 13 worked was September the 7th, 1999.
- 14 Q July the 19th --
- 15 A Right.
- 16 Q -- '99?
- 17 A Yes.
- 18 Q That's the start date?
- 19 A Yes.
- 20 Q And what was his end date, again?
- 21 A September the 7th, 1999.
- 22 Q September the 16th, 1999, was Richard Bernard Moore
- 23 working for your company?
- 24 A No.
- 25 Q What did Mr. Moore do for Kohler?

Sid Devaul
Direct examination by Mr. Willingham

1 A He was a caster.

2 Q And what is that?

3 A That's a factory employee, the first part of the
4 manufacturing operation where they basically make --

5 MR. MORIN: Your Honor --

6 A -- the product.

7 MR. MORIN: I object to relevancy.

8 THE COURT: Overruled.

9 Q Go ahead and finish your answer.

10 A It's the first part of the manufacturing operation
11 where they actually make the bowl. We make Vitreous line of
12 plumbing products.

13 Q Okay.

14 MR. WILLINGHAM: I have no other questions of this
15 witness, Your Honor.

16 Q If you would, answer any questions of defense counsel.

17 MR. MORIN: No, sir. I don't have any questions.

18 THE COURT: Thank you, sir. You may step down.

19 Next witness.

20 LORI SHERMAN GILBERT, having been
21 first duly sworn, testified as follows:

22 THE COURT: Please state your name for the record, and
23 spell your last name, ma'am.

24 THE WITNESS: Lori Sherman Gilbert.

25 THE COURT: And your last name is spelled --

Lori Sherman Gilbert
Direct examination by Mr. Barnette

1 THE WITNESS: G-I-L-B-E-R-T.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, ma'am, speak up so we can all hear you.
5 Okay?

6 A I'm sorry.

7 Q Do you live in Spartanburg, Spartanburg County?

8 A Yes, sir, I do.

9 Q Back on September the 16th, 1999, where did you live in
10 Spartanburg County?

11 A 131 Mapletree Lane in Whitney, South Carolina.

12 Q Had you had the occasion back then to meet the
13 defendant, Mr. Richard Moore?

14 A Yes, sir, I did.

15 Q And do you see him here in court today?

16 A Yes, I do.

17 Q And can you identify him for the Court, please?

18 A He is sitting on the left.

19 Q Okay. And can you describe what he is wearing?

20 A Yes. He is wearing a suit and a blue light shirt with
21 a tie.

22 Q Is he the black gentleman there at the table?

23 A Correct.

24 MR. BARNETTE: Just for the record, she has identified
25 the defendant, Your Honor.

Lori Sherman Gilbert
Direct examination by Mr. Barnette

1 THE COURT: Yes, sir.

2 Q Ms. Turner, could you tell the Court and the jury, when
3 is the first time you met Mr. Moore?

4 A I suppose it was at the beginning of September the 1st,
5 and I had known Richard Moore maybe two weeks. Me and my
6 son -- he lived about a half a block around from me and my
7 house. And me and my two-year-old son would walk around the
8 block two or three times a day to get exercise.

9 THE COURT: Ma'am, could I get you to turn the
10 microphone loose? If you'll just speak into it, it will be
11 okay. It effects the court reporter's --

12 THE WITNESS: I'm sorry.

13 Q Go ahead.

14 A Okay. And at this particular day we were -- I was
15 upset with my fiance. And me and my son went to go take a
16 walk.

17 And I saw this gentleman, Richard Moore, in his yard,
18 and I asked him could I use his telephone. He did let me
19 use his telephone.

20 He showed me pictures of his girlfriend and his
21 children. I was at his house six or seven minutes. And I
22 didn't see him until several days later when I was taking
23 another walk with my son.

24 Q What happened the next time?

25 A The next time I saw Mr. Moore he was with a husky black

Lori Sherman Gilbert
Direct examination by Mr. Barnette

1 man. They were working on his truck. And as me and
2 Christen was walking by, he called me over there. And we
3 were just kind of having a conversation. And mostly he was
4 talking with the other man, which I do not see in here
5 today. And, basically, the only thing that I really do
6 remember him saying before I left is I'm broke and I don't
7 know what I am going to do.

8 Q And later on did you hear that there was an incident at
9 Nikki's Speedy Mart that day?

10 MR. MORIN: Objection to hearsay.

11 THE COURT: Sustain the objection.

12 Q If you would, Ms. Turner, please answer any questions
13 Mr. Morin may have.

14 MR. MORIN: Just a moment.

15 (Pause.)

16 MR. MORIN: I don't have any questions of her.

17 THE COURT: Thank you, ma'am. You can step down.

18 Next witness.

19 MR. BARNETTE: Jeannie Smith, Your Honor.

20 JEANNIE SMITH, having been first
21 duly sworn, testified as follows:

22 THE COURT: Please state your name for the record, and
23 spell your last name, ma'am.

24 THE WITNESS: Jeannie Smith, S-M-I-T-H.

25 THE COURT: Thank you.

Jeannie Smith
Direct examination by Mr. Barnette

1 MR. BARNETTE: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. BARNETTE

3 Q Ms. Smith, make sure you keep speaking up so we can all
4 hear you in here.

5 A Okay.

6 Q I appreciate it. Ms. Smith, where do you live at,
7 ma'am?

8 A I live in Greenville.

9 Q And where do you work at, ma'am?

10 A I work at Spartanburg Regional Medical Center.

11 Q And what do you do at Spartanburg Regional?

12 A I'm a registered nurse.

13 Q And how long have you worked at Spartanburg Regional,
14 ma'am?

15 A Three -- three and a half years, almost four years.

16 Q And how long have you been a nurse, ma'am?

17 A Eleven and a half years.

18 Q And back on September the 16th, 1999, were you working
19 at Spartanburg Regional then?

20 A Yes, I was.

21 Q And where were you working at, ma'am?

22 A I was employed full time in the neuro intensive care
23 unit.

24 Q And back on September the 16th, 1999, were you working
25 in another department for that night?

Jeannie Smith

Direct examination by Mr. Barnette

1 A Yes. I was pulled down to the emergency department for
2 that shift.

3 Q And working in the emergency room and everything, did
4 you have several patients that night and that morning, early
5 morning hours?

6 A Yes.

7 Q And do you remember a record on a Richard Moore or
8 dealing with Richard Moore?

9 A I remember the record on Richard Moore.

10 Q If I would show you a record, would that refresh your
11 memory?

12 A Yes.

13 MR. BARNETTE: One moment, Your Honor, please.

14 May I approach the witness, Your Honor?

15 THE COURT: Yes.

16 Q Ms. Smith, let me give you a moment to look at that and
17 see if that is a copy of your record, ma'am.

18 A Yes, this is.

19 Q And did you do an assessment on Mr. Moore when he came
20 in the hospital that day?

21 A Yes, I did.

22 Q And in your assessment can you tell us what your
23 assessment found?

24 A That he was admitted into the emergency room with a
25 gunshot wound to his left arm. He had -- I have documented

Jeannie Smith
Cross-examination by Mr. Morin

1 that he had alcohol and cocaine present; and that I had
2 noted the odor of alcohol; also that he was disoriented.

3 Q Okay. So you had notated that he had alcohol and
4 cocaine present.

5 A I did.

6 Q And would that information be gathered from Mr. Moore
7 himself?

8 A More than likely it would. It either comes from the
9 patient or from the E. M. S., you know, report. Whenever
10 they bring the patient into the emergency room, you know,
11 they give the nurse that is receiving the patient a report,
12 you know, as far as, you know, what happened and kind of,
13 you know, if there is anything unusual, about we need to
14 know about.

15 And if they did not give me any kind of report from
16 that, you know, I do obtain that from the patient also.

17 MR. BARNETTE: One moment, Your Honor.

18 Q Thank you ma'am. Please answer any questions Mr. Morin
19 may have for you.

20 A Okay.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. MORIN

24 Q Could you describe this wound to Mr. Moore's arm?

25 A I don't recall seeing the wound. I do remember when he

Jeannie Smith
Cross-examination by Mr. Morin

1 came in, it had a dressing on it.

2 Q And this that is setting before you that Mr. Barnette
3 showed you, is that your report?

4 A Uh-huh.

5 Q Okay. And you note that he had, he had an entry and an
6 exit wound on that.

7 A Uh-huh.

8 Q So, this gunshot wound or the wound went through his
9 arm.

10 A Uh-huh. It was the E. M. S. report, was, you know,
11 that they had, they had found the entrance and the exit
12 wound, you know, and that they had dressed it, you know, at
13 the site.

14 Q And there was also quite an abrasion.

15 A Yeah. I remember that he had an abrasion to his, I
16 guess, pectoral area also.

17 Q And, now, when I say abrasion, I mean, was it bleeding
18 or was it a small scrape?

19 A I don't remember if it was bleeding, but I do remember
20 that he had, you know, a pretty good scrape, you know, there
21 to the chest area.

22 Q Had it been treated as well, had some --

23 A I think they had just like a small dressing on it, you
24 know, and we had taken that off and looked at it.

25 Q Thank you, ma'am.

Dr. Hugh Ashley
Direct examination by Mr. Gowdy

1 THE COURT: Redirect.

2 MR. BARNETTE: Nothing on redirect, Your Honor. We
3 would ask the witness to be excused.

4 THE COURT: Without objection, she is excused. Thank
5 you for coming, ma'am.

6 (Whereupon, the witness was excused.)

7 MR. BARNETTE: Your Honor, we would like to ask for
8 Ms. Gilbert to be excused also.

9 THE COURT: Without objection, she is excused.

10 (Whereupon, the witness was excused.)

11 MR. BARNETTE: Thank you, Your Honor.

12 THE COURT: Next witness.

13 MR. GOWDY: May it please the Court, Your Honor, the
14 state would call Dr. Hugh Ashley.

15 DR. HUGH ASHLEY, having been first
16 duly sworn, testified as follows:

17 THE COURT: Sir, if you would, state your name for the
18 record, and spell your last name.

19 THE WITNESS: Thomas L. Ashley.

20 DIRECT EXAMINATION BY MR. GOWDY

21 Q Good afternoon, Dr. Ashley. Can you tell the ladies
22 and gentlemen of the jury where you work and what department
23 and how long have you been there?

24 A Okay. I am the Director of Trauma Surgery at
25 Spartanburg Regional. I've been there for six years.

Dr. Hugh Ashley
Direct examination by Mr. Gowdy

1 Q Now, as the director of trauma surgery, obviously, you
2 are a doctor.

3 A Yes, sir.

4 Q Can you tell the ladies and gentlemen of the jury where
5 you went to medical school and what your post medical school
6 training would have been?

7 A Yes, sir. I went to medical school at Wayne State
8 University in Detroit, Michigan, and did my surgical
9 residency there in Detroit at Henry Ford Hospital.

10 Q Have you worked in emergency department or emergency
11 room settings before treating emergency patients?

12 A Yes, sir.

13 Q And for how long?

14 A I've done that through most of my training and almost
15 my entire career.

16 Q Would you have an estimate, Doctor, of how many
17 patients you have treated in an emergency room setting since
18 you graduated medical school?

19 A I am certain it's in the thousands.

20 Q Are you -- have you diagnosed injuries and treated
21 injuries as part of your practice?

22 A Yes, sir.

23 MR. GOWDY: Your Honor, I would move Dr. Ashley in as
24 an expert in the field of emergency medicine.

25 THE COURT: Questions concerning his qualifications?

Dr. Hugh Ashley
Direct examination by Mr. Gowdy

1 MR. MORIN: No, sir.

2 THE COURT: All right. You can continue.

3 Q Dr. Ashley, did you have occasion to treat a Richard
4 Moore?

5 A Yes, sir.

6 Q Can you tell the ladies and gentlemen of the jury what
7 injuries you found upon your treatment of him, your
8 examination of him?

9 A Yes, sir.

10 We were called to see him in the emergency room. And,
11 essentially, the injuries that we examined on him was an
12 entrance wound on the lateral portion of the left arm and an
13 exit wound in the medial portion.

14 Q Now, in layman's terms does that mean it went in that
15 side of the arm and came out that side of the arm?

16 A Yes, sir.

17 Q Did you have occasion, Dr. Ashley, to look at any
18 x-rays to determine whether or not the slug or the bullet or
19 projectile was still in his arm?

20 A Yes. We would just get an x-ray normally because
21 obviously that was where the bullet wound was. And we would
22 be interested whether there was a bony injury or not. So,
23 we did get an x-ray of the humerus, the left humerus.

24 Q And did you find a projectile or bullet in his arm?

25 A There were bullet fragments on the x-ray within the

Dr. Hugh Ashley
Direct examination by Mr. Gowdy

1 soft tissue of the arm itself.

2 Q When you say bullet fragments, Dr. Ashley, that
3 suggests more than one to me. Is that what you found on the
4 x-ray?

5 A Yes, sir.

6 Q Do you have an explanation as a medical doctor as to
7 how there could be fragments in the arm?

8 A Yes. When the bullet is traveling, it impacts the
9 bone. And depending on the makeup of the bone, if it is
10 very dense, it could hit the bone at an angle in such a way
11 that the energy is distributed by the bullet fragmenting.

12 Q If I understand your testimony correct, Doctor, there
13 are fragments that were still in his arm.

14 A Yes.

15 Q But there is also an exit wound.

16 A Uh-huh.

17 Q Does that mean the bullet disintegrated?

18 A It could mean that some of the fragments or one or more
19 fragments left the arm on the inside of the arm, what we
20 presume to be the exit wound.

21 Q Did you remove the fragments from his arm?

22 A No, sir.

23 Q How many stitches did it require to stitch up Mr.
24 Moore's injuries?

25 A Normally, we do not stitch bullet wounds, entrance or

Dr. Hugh Ashley
Cross-examination by Mr. Morin

1 exit, because they have a high likelihood of infection. So
2 we leave them alone.

3 Q Have you treated enough gunshot victims, folks that
4 have been shot, to have an opinion on the caliber of the
5 projectile that would have entered into Mr. Moore's arm?

6 A Yes, sir.

7 Q What is your opinion, Dr. Ashley?

8 A Of this particular bullet in fragments, I would say
9 that it would probably be a .38 or larger.

10 Q Or larger?

11 A Uh-huh.

12 Q A large projectile?

13 A Yes, sir.

14 Q And, again, did you say that there was an entry wound
15 and an exit wound?

16 A That's correct.

17 MR. GOWDY: I don't have any further questions for Dr.
18 Ashley, Your Honor.

19 Q Thank you.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. MORIN

23 Q Doctor, when you saw Mr. Moore was he still bleeding?

24 A There was some oozing going on, yes.

25 Q Could you tell from the examination of the wound as to,

Dr. Hugh Ashley
Cross-examination by Mr. Morin

1 if he had been bleeding, how seriously he had been bleeding?

2 Obviously, he had been treated before you saw him.

3 A Yeah. It's hard for me to determine. However, his
4 blood pressure was normal, and his hemoglobin level was
5 normal as well. So given those facts and the general
6 overall appearance of the patient, we wouldn't normally be
7 concerned about the blood loss at the scene.

8 Q Now, you said that you saw fragments which would
9 indicate it struck, at least your opinion, the bone causing
10 it to do that type of fragmentation.

11 A I saw fragments on the x-ray, that's correct.

12 Q He also had an abrasion to his left pectoral region, is
13 that correct?

14 A Uh-huh.

15 Q Could you describe that wound for me?

16 A It was approximately a couple of inches in length, and
17 it was above the nipple. And the presumption was, I mean,
18 obviously, we couldn't prove it, that it was possibly caused
19 by one of the exiting bullets.

20 Q Okay. Now, when you were answering Mr. Gowdy's
21 questions, you used the word presumption. When you say
22 there was an exit and an entry wound, can you say with
23 certainty which one was which?

24 A Yes. Normally the entrance wound is a very smooth,
25 regular sort of perforation in the skin, whereas on an exit,

Dr. Hugh Ashley
Cross-examination by Mr. Morin

1 if you would imagine the injury imparted on the bullet and
2 the fragments, it's tumbling and rolling. And it is
3 somewhat more of a shredded exit.

4 Q And getting back again to the pectoral wound, was that
5 a fretted type situation?

6 A No. It's more of a linear sort of abrasion, sort of
7 thing.

8 Q Thank you, Doctor.

9 THE COURT: Redirect.

10 MR. GOWDY: Nothing on redirect, Your Honor.

11 THE COURT: Thank you very much, Doctor. You may step
12 down.

13 Are you asking that he be excused?

14 MR. GOWDY: Yes, sir, Your Honor.

15 THE COURT: Without objection, you are excused, sir.

16 (Whereupon, the witness was excused.)

17 MR. WILLINGHAM: May we approach?

18 THE COURT: Yes, sir.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: Ladies and gentlemen of the jury, we're
22 going to take a very short break right now before our next
23 witness so that the lawyers can get the exhibits organized
24 properly.

25 As I send you to the jury room, please do not discuss

Conference with juror

1 this case among yourselves. We'll get you back in just a
2 few minutes.

3 The jury may retire. Everyone else remain seated,
4 please.

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

7 THE COURT: Before we take our break, let me see the
8 lawyers up here just a moment, please.

9 (Bench conference held off the record outside the
10 presence of the jury.)

11 THE COURT: Mr. Bailiff, would you bring Juror Number
12 160, Debbie Lindsay, out, please, sir?

13 (The following takes place at the bench with Juror
14 Number 160.)

15 THE COURT: Come right up here, please, ma'am.

16 I have a note here that your daughter has called and
17 said that your friend Ms. Cash's family called and wants to
18 know where Mr. Cash's Will is. Mr. Cash has not died. It
19 says she would like for someone to leave a message on your
20 answering machine if you have an answer to that question.

21 THE JUROR: I don't have a clue.

22 THE COURT: I will get the clerk's office to call and
23 say you don't know.

24 Thank you, ma'am. I am sorry to upset you.

25 (Whereupon, the juror was excused from the courtroom.)

Lisa Kiser
Direct examination by Mr. Willingham

1 THE COURT: All right. We will stand at ease for just
2 a few minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Are you ready to proceed,
5 Solicitor?

6 MR. WILLINGHAM: The state is ready, your Honor.

7 THE COURT: Is the defendant ready?

8 MR. MORIN: Yes, sir.

9 THE COURT: Okay. Let's bring them back, Cotton.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Thank you very much, ladies and gentlemen
13 of the jury.

14 Next witness, please, Solicitor.

15 MR. WILLINGHAM: Your Honor, we call Lisa Kiser.

16 LISA KISER, having been first duly
17 sworn, testified as follows:

18 THE COURT: Please state your name for the record, and
19 spell your last name, ma'am.

20 THE WITNESS: Lisa G. Kiser, K-I-S-E-R.

21 DIRECT EXAMINATION BY MR. WILLINGHAM

22 Q Ms. Kiser, where do you work?

23 A I work for South Carolina Law Enforcement Division,
24 also known as SLED.

25 Q And what do you do for SLED?

Lisa Kiser

Direct examination by Mr. Willingham

1 A I'm a forensic technician in the evidence processing
2 department.

3 Q What does that mean?

4 A We examine a variety of items for the presence of hair,
5 fiber, blood and semen. We collect that evidence, and we
6 preserve it. And then we send it on to other departments
7 for further analysis.

8 Q And what type of training background have you had to be
9 able to perform this job?

10 A I have an associates degree from Anderson College.
11 I've also trained with court-qualified experts in serology,
12 D. N. A. and trace at SLED.

13 I have had experience in the F. B. I. crime lab in
14 their evidence processing department. I'm also a member of
15 the S. C. I. I. which handles workshops and seminars for
16 blood spatter and crime scene construction and those types
17 of seminars.

18 Q Have you ever testified before as an expert in evidence
19 processing?

20 A Yes, I have.

21 MR. WILLINGHAM: Your Honor, at this time I would offer
22 Ms. Kiser as an expert in evidence processing.

23 THE COURT: Questions concerning her qualifications?

24 MR. MORIN: No, sir.

25 THE COURT: All right. You may continue.

Lisa Kiser
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: Thank you.

2 Q Ms. Kiser, did you receive numerous items of evidence
3 in this particular case?

4 A Yes, I did.

5 Q And I show you State's Exhibit Number One and ask if
6 you received that.

7 A Yes. I can identify this. It has our SLED lab number
8 on it, my initials and the date that I processed it.

9 Q And when you say you processed that item, what does
10 that mean?

11 A First of all, I examine the item for any stains. And
12 then we do a presumptive test for blood, and it's called
13 phenolphthalein. And what we'll do is we'll take a saline
14 swab, swab the area, drop the phenolphthalein on it and then
15 come behind it with hydrogen peroxide.

16 If there is blood possibly there, it will turn a pink
17 color. And at that time we'll collect the stain and then
18 send it on for further analysis.

19 Q Okay. Did you perform that test on that gun?

20 A Yes, I did.

21 Q And this is a .44 caliber handgun.

22 A Yes.

23 (Worksheet marked State's Exhibit Number Thirty-nine
24 for Identification.)

25 Q I'm going to show you what has been marked as State's

Lisa Kiser

Direct examination by Mr. Willingham

1 Exhibit Number Thirty-nine and ask if you recognize that.

2 A Yes. That would be the diagram that I did representing
3 the gun that I processed.

4 Q Is this an accurate copy of the diagram that you
5 prepared?

6 A Yes, it is.

7 Q And have the original with you.

8 A That's correct.

9 MR. WILLINGHAM: Your Honor, at this time I move
10 State's Exhibit Number Thirty-nine into evidence.

11 THE COURT: Any objection?

12 MR. MORIN: No, sir.

13 THE COURT: Without objection it is admitted.

14 (Worksheet marked State's Exhibit Number Thirty-nine.)

15 Q If you would, please explain to the jury using this
16 diagram how you processed that gun that is in front of you.

17 A Okay. On the gun, initially I examined it for any
18 stains that were there. And where you see swab 1.1, that's
19 where I would have collected the first swab.

20 And, like I said, what I do is I take the swab. And I
21 put the first swab to the side and then come back with the
22 second swab to see if there is a presence of blood there.
23 And on all of these swabs 1.1, 1.2, 1.3 and 1.4, it was
24 presumptive for blood with the phenolphthalein test.

25 Q And you took four swabs off that, correct?

Lisa Kiser

Direct examination by Mr. Willingham

1 A That's correct, and in four separate areas.

2 Q Okay. I am going ask you about two of them. I show
3 you State's Exhibit 1.1 and ask if you recognize that.

4 A Yes, I do.

5 Q What is it?

6 A That's the swab that I took from the gun, which is
7 displayed right here.

8 Q Show you State's Exhibit 1.2 and ask if you recognize
9 that.

10 A Yes, I do. And on both envelopes my initials are on
11 the back where I sealed it and sent it on to D. N. A.

12 MR. WILLINGHAM: Your Honor, at this time I move
13 State's 1.1 and 1.2 into evidence.

14 THE COURT: Any objection?

15 MR. MORIN: No, sir.

16 THE COURT: Without objection, they are admitted.

17 (Swab from .44 pistol marked State's Exhibit Number
18 1.1; swab from .44 pistol marked State's Exhibit Number 1.2)

19 Q Ms. Kiser, did you receive another weapon to process?

20 A Yes, I did.

21 Q I show you State's Exhibit Number Three and ask if you
22 recognize that.

23 A Yes, I do.

24 Q And what is it?

25 A This is also -- this is SLED's lab number three, my

Lisa Kiser

Direct examination by Mr. Willingham

1 initials and the lab number and the date that I processed.

2 And that's the gun.

3 Q And that is a .45 caliber handgun.

4 A Yes.

5 (Worksheet marked State's Exhibit Number Forty for
6 Identification.)

7 Q Let me show you what has been marked as State's Exhibit
8 Number Forty and ask if you recognize that.

9 A Yes, I do.

10 Q And what is it?

11 A That is the diagram of the gun, my item 3.0.

12 Q And likewise, State's Exhibit Number Three.

13 A Correct.

14 Q And does that accurately reflect your notes, the
15 original you have in front of you?

16 A That's it.

17 MR. WILLINGHAM: The state moves Number Forty into
18 evidence, Your Honor.

19 THE COURT: Without objection, it's admitted.

20 (Worksheet marked State's Exhibit Number Forty.)

21 Q If you would, tell the jury how you processed that gun.

22 A On this one, it was examined the same way, just
23 examined it visually for any stains that were there, and
24 right here is 3.1.

25 3.2 was actually taken from the handle. It was a

Lisa Kiser
Direct examination by Mr. Willingham

1 broken handle, and that's where I took that swab from. And
2 then 3.3 was up at the top.

3 Q I show you what has been previously marked as State's
4 Exhibit 3.1 and ask if you recognize that.

5 A Yes. Those are the swabs that I took from that pistol.

6 Q At what location?

7 A 3.1 would be right here.

8 Q I show you State's Exhibit 3.2. Do you recognize that?

9 A Yes. And I documented that was from the handle of the
10 pistol, 3.2.

11 Q And that's -- both of those are from State's Exhibit
12 Number Three.

13 A Correct.

14 MR. WILLINGHAM: Your Honor, at this time I move 3.1
15 and 3.2 into evidence.

16 THE COURT: Without objection, they are admitted.

17 (Swab from .45 pistol marked State's Exhibit Number
18 3.1; swab from pistol marked State's Exhibit Number 3.2.)

19 Q Did you forward these on for D. N. A. analysis as well?

20 A Yes, I did.

21 Q And, now, State's Exhibit Number Three is a .45 caliber
22 Industria Argentina Pistol, is that correct?

23 A That's correct.

24 Q I am going to show you State's Exhibit Number
25 Eighty-five. It has already been introduced into evidence,

Lisa Kiser

Direct examination by Mr. Willingham

1 and ask if you recognize that.

2 A Yes, I do.

3 Q And what is that?

4 A That's my item 83 which was the meat cleaver with the
5 wooden handle that I examined for the presence of blood.

6 Q Did you find any blood on that?

7 A Yes, I did.

8 Q And where did you take samples from?

9 A Would you like for me to take this out?

10 Q Let's do this.

11 A Can you turn it the other way?

12 Q That --

13 A Okay. Where you see that I circled that area, which I
14 can't really read it, that would be an area where it is
15 83.1. I see it now.

16 83.1 would be that area, is where I took that swab.

17 And then 83.2, the area that I circled there, would be where
18 I took the second swab.

19 Q I show you what has been marked as State's Exhibit
20 83.1. Do you recognize that?

21 A Yes, I do.

22 Q And what is it?

23 A That's the swab from the meat cleaver.

24 Q Which, which part of it?

25 A 83.1 would be in this area right here.

Lisa Kiser
Direct examination by Mr. Willingham

1 Q State's 83.2.

2 A Yes. This is the swab from the handle of the meat
3 cleaver, which is this area.

4 Q You forwarded these on for D. N. A. analysis as well,
5 is that correct?

6 A That's correct.

7 MR. WILLINGHAM: Your Honor, at this time I move 83.1
8 and 83.2 into objection.

9 THE COURT: Without objection, they are admitted.

10 (Swab from meat cleaver blade marked State's Exhibit
11 Number 83.1; swab from meat cleaver handle marked State's
12 Exhibit Number 83.2)

13 Q I show you what has been marked as State's Exhibit
14 Number Ninety-four which has already been introduced into
15 evidence and ask if you recognize that.

16 A Yes, I do.

17 Q And what is it?

18 A Item 94 is a pair of Levi jeans, and it also contains
19 item 101 which would be a black leather belt.

20 Q Okay. And did you perform any analysis or any
21 processing on those jeans?

22 A Yes, I did.

23 (Diagram marked State's Exhibit Number Forty-one for
24 Identification.)

25 Q I show you what has been marked as State's Exhibit

Lisa Kiser

Direct examination by Mr. Willingham

1 Number Forty-one and ask if you recognize that.

2 A Yes. This is a copy of the diagram that I made from
3 the jeans.

4 Q Accurate copy of your original?

5 A That's correct.

6 MR. WILLINGHAM: Your Honor, at this time I move
7 State's Exhibit Forty-one into evidence.

8 THE COURT: Without objection, it is to be admitted.

9 (Diagram marked State's Exhibit Number Forty-one.)

10 Q If you would, tell the jury what you did to process
11 those pants.

12 A Okay. As you can see here, when I examine a piece of
13 evidence, I just write down anything that I notice about it.
14 And this is the front of the jeans. There was some rips on
15 both sides.

16 The back of the jeans is where I made my cuttings.
17 Right here is 94.1. I made a very large cutting there.
18 94.2 would be here, the pocket, and 94.3 would be the middle
19 area right there on the jeans in the back.

20 Q I show you what has been marked as State's Exhibit
21 94.1.

22 A Yes.

23 Q Do you recognize that?

24 A Yes, I do.

25 Q And what is it?

Lisa Kiser

Direct examination by Mr. Willingham

1 A This is the cutting 94.1, right here, that I made from
2 the jeans. Those are my initials.

3 Q I show you 94.2. Do you recognize that?

4 A Yes, yes, I do.

5 Q What is it?

6 A That is also the cutting 94.2 that I made right here on
7 the jeans.

8 Q And 94.3. Do you recognize that?

9 A Yes, I do.

10 Q And what is it?

11 A Right here, a cutting that I made from the jeans.

12 Q Did you also forward these on for D. N. A. analysis?

13 A Yes, I did.

14 MR. WILLINGHAM: Your Honor, at this time I move
15 State's 94.1, 94.2, 94.3 into evidence.

16 THE COURT: Without objection, they are admitted.

17 (Cutting from Levis jeans marked State's Exhibit Number
18 94.1; cutting from Levis jeans marked State's Exhibit Number
19 94.2; cutting from Levis jeans marked State's Exhibit Number
20 94.3.)

21 Q I show you what has been marked as State's Exhibit
22 Number Ninety-five and ask if you recognize it.

23 A Yes, I do.

24 Q And what is it?

25 A This is the shirt that I processed for the presence of

Lisa Kiser

Direct examination by Mr. Willingham

1 blood, my SLED number 95 also.

2 (Diagram marked State's Exhibit Number Forty-two for
3 Identification.)

4 Q Showing you State's Exhibit Forty-two and ask you if
5 you recognize that.

6 A Yes. That's the digram that I made from the shirt.

7 Q Accurate copy of your original?

8 A That's correct.

9 MR. WILLINGHAM: Your Honor, at this time I move
10 State's Forty-two into evidence.

11 THE COURT: Without objection, it will be admitted.

12 (Diagram marked State's Exhibit Number Forty-two.)

13 Q If you would, explain to the jury how you processed
14 that shirt.

15 A Okay. On this shirt there were obvious stains noted
16 where I made the cuttings. I also noted too there was a
17 missing button here.

18 And 95.1 is this large cutting right here that I took
19 from the back of the shirt. Ninety-four point, excuse me.
20 95.2 would be here where I made a cutting, and 95.3 is on
21 the front of the shirt where I made a large cutting there
22 also.

23 Q You said you noticed stains. Were you able to
24 determine what those stains were on that shirt?

25 A It was presumptive for blood.

Lisa Kiser

Direct examination by Mr. Willingham

1 Q Okay. You made three or four cuttings on that shirt.

2 A Three.

3 Q Three. I want to show you two. I show you first
4 State's Exhibit 95.1. Do you recognize that?

5 A Yes, I do.

6 Q And where did that come from?

7 A That came from the shirt. That was the cutting that I
8 made, 95.1, which is noted here.

9 Q I show you State's 95.2 and ask if you recognize that.

10 A Yes. That is the cutting that I made right here from
11 the shirt, the back.

12 Q And, again, did you forward these on for D. N. A.
13 analysis?

14 A Yes, I did.

15 MR. WILLINGHAM: Your Honor, at this time I move
16 State's Exhibit 95.1 and 95.2 into evidence.

17 THE COURT: Without objection, they will be admitted.

18 (Cuttings from Arrow shirt marked State's Exhibit
19 Number 95.1; cuttings from Arrow shirt marked State's
20 Exhibit Number 95.2.)

21 Q Ms. Kiser, if you would, answer any questions the
22 defense or the Court may have for you.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. MORIN

Lisa Kiser
Cross-examination by Mr. Morin

1 Q Ms. Kiser, throughout your testimony you referred to
2 this examination that you did as presumptive, is that right?

3 A That's correct.

4 Q It is not conclusive, is it?

5 A No, sir.

6 Q And that's because there are other substances that
7 could turn it pink, as you say, isn't that right?

8 A There are a few.

9 Q There are a few. Why don't you share a few with us?
10 What are a few?

11 A Rust is known to cause a false positive. Radishes.

12 Q Radishes?

13 A Those are the only two that I am aware of causing a
14 false positive.

15 Q You are not aware of Tabasco sauce causing a false
16 positive?

17 A Not to my knowledge.

18 Q And radishes are the only group or vegetable that you
19 are aware of that causes a false positive.

20 A That's all that I am aware of.

21 Q Thank you very much.

22 THE COURT: Redirect.

23 MR. WILLINGHAM: No, sir, Your Honor. We ask that she
24 be excused.

25 THE COURT: Without objection, Agent Kiser, you are

1 excused.

2 I appreciate you coming, ma'am.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 THE COURT: Let me see the lawyers up here just one
6 moment, please.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Madam foreperson and ladies and gentlemen
10 of the jury, after talking with the lawyers, I think that we
11 have reached the appropriate point today to suspend the
12 consideration of the testimony and evidence at this point in
13 time.

14 I know from talking with your jury custodians a little
15 bit earlier this afternoon that they already have plans made
16 for you in about an hour or so for dinner.

17 So, as I send you away from the courthouse, I will
18 remind you, once again, that you are not discuss this case
19 among yourselves as you exit the courthouse, while you are
20 away from the courthouse.

21 Upon your return to the courthouse, you are not to
22 discuss this case among yourselves in any manner or fashion
23 whatsoever, nor with anyone else that you might come in
24 contact with, whether it be your custodians or otherwise.

25 Once again, although your activities are monitored, I

Colloquy

1 will always remind you that if anyone should attempt to
2 contact you concerning this case, report that to your
3 custodian immediately. And they will see that it's reported
4 to me.

5 Also, you are not to read, watch or listen to any news
6 accounts concerning this case.

7 Once again, as you've heard me say many times
8 throughout the course of this week, and will hear me say
9 many more times, all I want you to consider in this matter
10 is what you see and here in this courtroom, nothing more and
11 nothing less.

12 We are going to start back in the morning at 9:00 a.m.
13 Thank you very much for a good day of work. We have gone
14 through a number of witnesses. We are making good progress
15 with the case.

16 I hope you have a very pleasant evening, and I will
17 look forward to seeing you in the morning at 9:00 a.m.

18 This jury is excused. Everyone else remain seated,
19 please.

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

22 THE COURT: All right. I was talking with the lawyers
23 at the bench before the jury was sent away to try to get an
24 idea of where we were in our case. And it looks like we are
25 moving along at good speed, and maybe the state would be

Colloquy

1 through with their case by lunchtime or early tomorrow
2 afternoon. Is that correct?

3 MR. GOWDY: Yes, sir, Your Honor.

4 THE COURT: And then, of course, the state has made a
5 request for a view of the jury -- of the scene, and I have
6 directed Mr. Morin and Mr. Kelly to go by and see if there
7 has been -- see what the status of it is insofar as you
8 gentlemen are concerned. And then I will make a
9 determination on that.

10 And given the fact that the state should finish their
11 case tomorrow afternoon at the latest, what I would say is
12 that if you have evidence that you are going to be
13 presenting, be prepared to move forward at that time.

14 Of course I will be talking with the defendant about
15 his rights at that particular point in time before we begin
16 your portion of the case. And then we will continue to
17 drive on. But I thank you very much for a very good day of
18 work today.

19 Anything else from the state before we break for the
20 evening?

21 MR. GOWDY: No, sir, Your Honor.

22 THE COURT: From the defendant?

23 MR. MORIN: No, sir.

24 THE COURT: Have a pleasant evening. I'll see you-all
25 in the morning at 9:00. I'll be here at 8:30 if you need

Colloquy

1 me.

2 END OF PROCEEDINGS OCTOBER 19, 2001

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Volume Nine -- Trial --
Guilt Phase

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Richard Bernard Moore,) 00-GS-42-617;618;619
7 Defendant.) October 15 - 22, 2001
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE GARY E. CLARY, JUDGE; and a jury
12

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

14 HAROLD W. GOWDY, III, ESQUIRE
15 BARRY J. BARNETTE, ESQUIRE
16 JAMES DONALD WILLINGHAM, II, ESQUIRE
Attorneys for the State

17 RALPH KEITH KELLY, ESQUIRE
18 MICHAEL DAVID MORIN, ESQUIRE
19 JENNIFER JOHNSON, ESQUIRE
Attorneys for the Defendant
20
21
22

23 LINDA D. MOFFITT
24 Circuit Court Reporter
25

Volume Nine -- Trial --
Guilt Phase

1 (Proceedings October 20, 2001)

2 THE COURT: Let me see the lawyers at the bench just
3 one minute, please.

4 (Bench conference held off the record.)

5 THE COURT: All right. Let the record reflect that we
6 have had a discussion here at the bench concerning the
7 defense's view of the scene.

8 The state has made a request for a jury view of the
9 scene, and it's my understanding from speaking with
10 Mr. Morin and Mr. Kelly that you have been there and that
11 you have no objection to the view.

12 MR. KELLY: That's correct, Your Honor.

13 MR. MORIN: No, sir.

14 THE COURT: Well, depending on where we are in the day,
15 we will allow the jury custodians to take them there. It
16 might be that insofar as arranging the logistics of it that
17 we'll need to take just a little bit of time and make sure
18 that everything is properly prepared for them to go out
19 there, and properly taken care of, but we'll work that out.

20 All right. Is the state ready to proceed?

21 MR. GOWDY: Yes, sir, Your Honor.

22 THE COURT: Is the defense ready?

23 MR. MORIN: Yes, sir.

24 THE COURT: Bring our jury back, please.

25 (The following takes place in the presence of the

Volume Nine -- Trial --
Guilt Phase

1 jury.)

2 THE COURT: Polling of the jury by the state?

3 MR. GOWDY: The state would waive, Your Honor.

4 THE COURT: By the defense?

5 MR. MORIN: The defense waives.

6 THE COURT: Good morning to you, Madam Foreperson and
7 ladies and gentlemen. It's good to see you again. I hope
8 you had a pleasant evening.

9 I understand that several of you were seeking to have
10 maybe some type of a footrest. If anyone else needs one, if
11 you will let the jury custodian know, then we can get
12 something maybe for you to place your feet upon. Sometimes
13 these chairs are not built for everyone, much like benches
14 are not built for every judge. So, you have to kind of make
15 adjustments to it.

16 We are going to continue with our case at this point in
17 time. And the state will call its next witness.

18 MR. BARNETTE: Thank you, Your Honor. May it please
19 the Court, Your Honor, I would like to call Ted Shealy to
20 the stand, please.

21 TED SHEALY, having been first duly
22 sworn, testified as follows:

23 THE COURT: Please state your name for the record, and
24 spell your last name, sir.

25 THE WITNESS: Ted M. Shealy, S-H-E-A-L-Y.

Ted Shealy
Direct examination by Mr. Barnette

1 DIRECT EXAMINATION BY MR. BARNETTE

2 Q Agent Shealy, if you would, state what your position is
3 at SLED, please.

4 A I am employed with the South Carolina Law Enforcement
5 Division. I am currently assigned to the arson
6 investigative unit. Prior to that I was assigned to the
7 latent print and crime scene unit.

8 Q How long was you involved with latent prints, sir?

9 A Approximately seven years.

10 Q And what kind of education and background and training
11 did you receive concerning that?

12 A I am a graduate of the University of South Carolina.
13 When I was hired on at SLED in the latent print crime scene
14 unit, I completed a comprehensive two-year training program.
15 And, basically, what this is is a hands-on working with
16 other court-qualified examiners.

17 During this time I attended numerous classes dealing
18 with fingerprints, footwear, tire tracks, blood spatter and
19 crime scene.

20 Some of the basic ones that I have attended is the
21 South Carolina Criminal Justice Academy Fingerprints, F. B.
22 I. fingerprints and numerous other classes.

23 I have testified as an expert in the area of impression
24 evidence approximately 66 times in state courts and in
25 federal courts.

Ted Shealy
Direct examination by Mr. Barnette

1 Q And that includes latent prints.

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I would like to move him at
4 this time as an expert in latent prints.

5 THE COURT: Questions concerning his qualifications?

6 MR. MORIN: No, sir.

7 THE COURT: You may continue.

8 Q Agent Shealy, did you conduct an examination of some
9 items involved in this case?

10 A Yes, sir, I did.

11 Q And what were those items, sir?

12 A My item one was a Charter Arms Bulldog .44 Special
13 Revolver, serial number 841057, containing four cartridges
14 and one casing.

15 My item two -- one N. E. F. Model R 73, .32 H and R
16 Magnum Revolver, Serial Number HJ006332; and one
17 semiautomatic .45 caliber pistol, Serial Number 21909, and
18 four other pieces of the gun, and my item 11, a four-way
19 tire iron.

20 Q I would show you, sir, these first three items. If you
21 would, these are the first three items. Could you see if
22 those are the items that you examined, sir?

23 A State's Exhibit Number One is the Bulldog .44 Special
24 Revolver I did process. You will notice it's still in the
25 original pouch and contains my item number, which is item

Ted Shealy
Direct examination by Mr. Barnette

1 one, the lab number and my initials.

2 State's Exhibit Number Two is the N. E. F. .32 Revolver
3 Model R 73. Here, again, you will notice it contains my
4 item number, our lab number, my initials.

5 State's Exhibit Number Three is the .45 automatic.
6 Here, again, you notice it contains the SLED item number and
7 SLED lab number and my initials. I processed all three of
8 these for latent prints.

9 Q If you would, tell the jury. What is your procedure
10 and what procedures do you follow in finding about latent
11 prints or discovering if there is any latent prints and what
12 you follow in those procedures?

13 A Once I receive these items, I will take them out and
14 run them through a series of processes to develop the latent
15 prints.

16 Now, when I use the word latent prints, it is from the
17 Latin meaning invisible. If you were to look at your hand
18 right here, you will notice this skin is very rough and
19 corrugated, not like the rest of your skin which is smooth.
20 It is composed of a series of ridges and valleys.

21 On top of these ridges is tiny sweat pores. These
22 pores are constantly exhuming sweat and other contaminants
23 which adhere to these ridge tops.

24 You may pick them up from touching yourself or rubbing
25 your hands through your hair or just general day-to-day use.

Ted Shealy
Direct examination by Mr. Barnette

1 The sweat and contaminants adhere to these ridge tops.
2 And when you touch a recipient surface, you may transfer
3 part or all of that fingerprint to that particular surface.

4 What you have to take into consideration is that these
5 prints are fragmentary, random and incidental. Just because
6 you touch a particular surface does not mean you are going
7 to leave a fingerprint.

8 You have to take into consideration the condition of
9 the hands. Are the ridges worn down? Is it raining
10 outside? Is it moist outside? Is it cold outside? Take
11 into consideration the condition of the weather.

12 You also have to take into consideration the condition
13 of the recipient surface. Is the surface smooth? Is it
14 rough? Good rule of thumb -- excuse me. Good rule of
15 thumb, if the surface is smoother, the better chances you
16 are to leave a fingerprint.

17 Here, again, just because you touch it does not mean
18 you are going to leave a fingerprint. The rougher the
19 surface, the harder it is to get a fingerprint.

20 Now, what we do, once we run the particular item
21 through a series of processes and we develop an impression,
22 we will either lift it with clear tape, and what I mean by
23 this is if we do have a particular latent on an item, we
24 will dust it with black powder, make the latent visible to
25 the naked eye so we can see it.

Ted Shealy

Direct examination by Mr. Barnette

1 If that does not happen, we can also capture it with
2 photography on a one-to-one basis.

3 Once we capture the latent impression, we will then
4 determine if it is identifiable or if it is meaningful to
5 make a comparison.

6 If it is, we will go to what is called a known standard
7 or, in other words, a known inked fingerprint card. What
8 this is, it is a fingerprint card. It is a card that has
9 fingerprints on it.

10 Take the fingers, roll a thin layer of printers ink.
11 Roll it in a controlled manner on the inked fingerprint
12 card. Hence, you will have a recording of the individual's
13 fingerprints.

14 You know, what we look for in a known and unknown is
15 called minutiae or characteristics. These can be ending
16 ridges, bifurcations or islands.

17 Simply what this means is when we're looking at, say, a
18 fingertip ending, we will look for these characteristics
19 within the pattern. In other words, if a ridge runs into
20 the pattern and abruptly stops, that is what is called an
21 ending ridge. That is a characteristic that we look for.

22 We may also look for what is called an island. This is
23 where the ridge runs into the pattern, splits into two
24 ridges and then comes back together to form an island.

25 Here we have two points or two characteristics. What

Ted Shealy
Direct examination by Mr. Barnette

1 we will do is compare the points in the latent or the
2 question impression to the known impression. If the
3 characteristics follow in the same unit relationship and the
4 same reposition and the same characteristics are present, we
5 can make an identification. If they are not, it's going to
6 be negative, with.

7 We also have what is called insufficient ridge detail.
8 Basically, what that means is some ridge detail was
9 developed but it was not enough for me to make a meaningful
10 comparison to any known standards that I have.

11 Q Did you get an examination on these weapons and try to
12 lift the prints from these weapons, sir?

13 A Yes, sir, I did.

14 Q And what was the results of that, sir?

15 A State's Exhibit Number One, which was the Charter Arms
16 .44 Special, no ridge detail was developed. In other words,
17 no fingerprints were developed.

18 Item two, the N. E. F. Model R 73, .32 revolver, some
19 ridge detail was developed, but, here, again, it was not
20 enough for me to make a meaningful comparison.

21 And item or State's Exhibit Number Three, my item
22 three, no ridge detail was developed. There, again, nothing
23 was developed for me to make a comparison.

24 Q And why was that, again, that you couldn't develop or
25 get any fingerprints from them?

Ted Shealy
Cross-examination by Mr. Morin

1 A Here again, you have to take into consideration several
2 things. You've got to remember a fingerprint is accidental,
3 and it's random. Just because you touch a particular item
4 does not mean that you are going to leave a fingerprint.

5 You have to take into consideration the individual's
6 hands, also if he's a sweater, the weather conditions
7 outside and how it was handled after it was touched.

8 Q Please answer any questions Mr. Morin may have, please.

9 THE COURT: Mr. Morin.

10 CROSS-EXAMINATION

11 BY MR. MORIN

12 Q Will you tell me if you recognize this, sir?

13 A Yes, sir. This is my item number 11. It's the
14 four-way tire iron. Here, again, if you look at the tire
15 iron, you will notice inscribed is the item number, my
16 initials and the lab number.

17 Q And you would have examined this piece of evidence as
18 well.

19 A Yes, sir. I did.

20 Q And what did you examine it for?

21 A Fingerprints also.

22 Q Do you know who made that request?

23 A The items were submitted by a Jackie Chapman.

24 Q Okay. And you made a report, is that right?

25 A Yes, sir, I did.

Ted Shealy
Cross-examination by Mr. Morin

- 1 Q And who did you send your findings to?
- 2 A Stephen L. Denton.
- 3 Q Steve Denton, the sheriff's department.
- 4 A Yes, sir.
- 5 Q Would you look at this item and tell me if you have
- 6 seen that item before?
- 7 A No, sir. I have not.
- 8 MR. MORIN: For the record, Your Honor, that was
- 9 State's Exhibit Number Eighty-three.
- 10 Q This item was not submitted to you?
- 11 A No, sir, it was not.
- 12 Q Now, let me ask you one other thing about this. You
- 13 had testified that the fingerprints do better on smooth
- 14 surfaces, is that correct?
- 15 A As a general rule, yes, sir.
- 16 Q All right. This item here, would that be a smooth
- 17 surface that you -- type of smooth surface that you
- 18 mentioned?
- 19 A Bear with me one minute, please.
- 20 Q Yes, sir.
- 21 (Pause.)
- 22 A That is a relatively smooth surface with the exception
- 23 of the handle.
- 24 Q Okay.
- 25 A It has got blood on it.

Ted Shealy
Cross-examination by Mr. Morin

1 Q And that wasn't submitted to you.

2 A No, sir.

3 Q Okay. I'm going to show you State's Four, Five and Six
4 and ask you if you have seen that, if you have seen it or
5 did any testing on any of these items.

6 A Our items five and six are spent cartridge casings. I
7 have not seen them. Our item -- is this four or 41?

8 Q That looks like 41 to me for your item. But that's
9 State's Exhibit Number --

10 A Four.

11 Q -- Four.

12 A State's Exhibit Number Four is a .45 caliber cartridge.

13 Q Okay.

14 MR. MORIN: I beg the Court's indulgence while I check
15 for this other piece of evidence that I would like for this
16 gentleman to look at.

17 THE COURT: Take your time.

18 (Pause.)

19 Q All right. And item number 86, once again, you might
20 be able to see. Was that submitted to you?

21 A No, sir, it was not.

22 Q And this is a pocketknife.

23 A Yes, sir.

24 Q It appears to be open.

25 A Yes, sir.

Ted Shealy
Redirect examination by Mr. Barnette
Recross-examination by Mr. Morin

1 MR. MORIN: One moment, Your Honor.

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. MORIN: That's all I have of this witness, Your
5 Honor.

6 THE COURT: Redirect.

7 MR. BARNETTE: One ore two questions, Your Honor.

8 THE COURT: All right, sir.

9 REDIRECT EXAMINATION

10 BY MR. BARNETTE

11 Q On this pen, for example, if I touch it a hundred times
12 is there a guarantee that I am going to leave a fingerprint
13 on it?

14 A No, sir.

15 Q If I touch it one time can I leave a fingerprint on it?

16 A It is possible.

17 Q So there is no rhyme or reason, is that correct?

18 A No, sir. Here, again, as I testified to earlier, it's
19 accidental, and it's random, it's fragmentary.

20 Q Thank you.

21 THE COURT: Recross.

22 RECROSS-EXAMINATION

23 BY MR. MORIN

24 Q Have you ever found fingerprints somewhere where you
25 didn't look? Have you ever found fingerprints on an item

Ted Shealy
Redirect examination by Mr. Barnette
Recross-examination by Mr. Morin

1 that you didn't look at?

2 A Have I ever found fingerprints? Could you be more
3 specific?

4 Q Well, it's random. These fingerprints are random, is
5 that correct?

6 A Yes, sir.

7 Q And you have looked in your experience at a lot of
8 items, and fingerprints randomly were on there.

9 A Yes, sir.

10 Q And you found fingerprints.

11 A Yes, sir.

12 Q All right. But in order for you to find them, you have
13 to have the item submitted to you to look, is that correct?

14 A Yes, sir.

15 Q Thank you.

16 THE COURT: Thank you, sir. You can step down.

17 MR. BARNETTE: Your Honor, we would ask that this
18 witness be excused.

19 THE COURT: Without objection, he is excused.

20 (Whereupon, the witness was excused.)

21 MR. BARNETTE: I would like to call Agent Whitler to
22 the stand.

23 KENNETH H. WHITLER, having been
24 first duly sworn, testified as follows:

25 THE COURT: State your name for the record, and spell

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 your last name, sir.

2 THE WITNESS: My name is Kenneth H. Whitler, and that
3 is spelled W-H-I-T-L-E-R.

4 THE COURT: Thank you.

5 MR. BARNETTE: Thank you, Your Honor.

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q Agent Whitler, if you would, please tell the jury about
8 your position at SLED, sir.

9 A I'm currently employed by the South Carolina Law
10 Enforcement Division, which is also known as SLED. I'm
11 currently assigned as a firearms examiner in the forensic
12 laboratory of SLED. I have been employed by SLED since
13 November of 1997 in that capacity.

14 Prior to that time I was employed by the Federal Bureau
15 of Investigation, and I was employed in the F. B. I.
16 laboratory also as a firearms and tool mark examiner.

17 Q And how many times have you testified in court as an
18 expert on firearms?

19 A I've testified over a hundred times in various state
20 and federal and territorial courts.

21 MR. BARNETTE: Your Honor, at this time we would like
22 to move he is an expert in firearms, sir.

23 THE COURT: Questions concerning his qualifications?

24 MR. MORIN: No, sir.

25 THE COURT: You may continue.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 MR. BARNETTE: Thank you, Your Honor.

2 Q Agent Whitler, did you have a chance to examine three
3 pistols that were submitted to you, sir?

4 A Yes, sir, I did.

5 Q And, if you would, please look at the boxes near you,
6 sir, and see if those are the items that you examined.

7 A Yes, sir. I did.

8 Q And State's Exhibit Number One, which I think is marked
9 as item number one by SLED, what kind of weapon is it, sir?

10 A Item number one or Exhibit One is a Charter Arms .44
11 Special Caliber Revolver.

12 Q And item number two, which is marked State's Exhibit
13 Number Two also, what kind of weapon is that, sir?

14 A It is a New England Firearms .32 H & R Magnum Revolver.

15 Q And can you tell the jury what item number three,
16 State's Exhibit Number Three, is, sir?

17 A Item three is a .45 caliber pistol.

18 Q The first two items, you said they were revolvers.

19 A Yes, sir.

20 Q And do they discharge any shells when they're fired?

21 A Not during the firing process. You can unload them,
22 but as a part of the firing process, when you pull the
23 trigger the cartridge case will remain in the firearm.

24 A And item number three, is it an automatic weapon?

25 A It's a semiautomatic pistol, and it's designed as part

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 of this firing process. As you pull the trigger, each time
2 the trigger is pulled a bullet is fired, and a cartridge
3 case is ejected from the pistol.

4 Q You also examined some shells and other things that
5 were submitted to you, is that correct?

6 A Yes, sir.

7 Q Let me hand these to you, sir, one at a time and let
8 you see if these are the items submitted to you for your
9 examination.

10 The first one is State's Exhibit Number Four, which I
11 believe is marked as item number four.

12 A Yes, sir.

13 Q And this is State's Exhibit Number Five, item number
14 five. Did you examine that, sir?

15 A Yes, sir, I did.

16 Q And State's Exhibit Number six, item number six.

17 A Yes, sir.

18 Q Let me show you State's Exhibits Seven, Eight, Nine and
19 Ten and see if you examined those items, sir.

20 A Yes, I did.

21 Q These items, sir, in your examination and your results
22 concerning this, which weapon fired these, either shell
23 casings -- I believe one of them was an unfired round.
24 Which one would they have been and which gun would they have
25 been fired from?

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A Exhibit Number Four was an unfired .45 caliber
2 cartridge, and it wasn't fired. So, but the items five
3 through ten, Exhibits Five through Ten are .45 caliber
4 cartridge cases that are fired.

5 And of the three guns that are up here, the only one
6 that could have fired it, in fact, identified, excuse me --
7 those cartridges cases as being fired by this pistol, which
8 is Exhibit Three.

9 Q Is that the .45 semiautomatic weapon?

10 A Yes, sir, it is.

11 Q And how many -- how many fired shells did you find or
12 was submitted to you that came from that weapon?

13 A There were six cartridge cases submitted.

14 Q And so it then shows those six shells was fired from
15 that weapon.

16 A Yes, sir.

17 Q And the unfired one would have been fired in the .45 if
18 it was fired.

19 A It's the only one that could be chambered into the --
20 into that cartridge. Excuse me. This cartridge will only
21 fit in this Exhibit Three pistol.

22 Q Thank you, sir. Let me show you State's Exhibits
23 Twelve through Twenty-two, sir. If you would, look and, if
24 you would, tell the jury if you examined those and what
25 those items will show.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A Okay. Exhibit Twelve is a lead bullet core. I did
2 examine that. Item 13 is also a lead bullet core.

3 Exhibit Fourteen is a fired bullet; Exhibit Fifteen is
4 also a fired bullet; Exhibit Twenty is a fired copper jacket
5 bullet fragment. It is a part of the bullet.

6 Item, Exhibit Twenty-one is a fired jacket fragment,
7 bullet jacket fragment; and item, Exhibit Twenty-two, is
8 also a bullet jacket fragment that has been fired.

9 Q Okay. Let me show you State's Exhibit Number Twenty,
10 sir, that has been entered into evidence. Where is the
11 location that bullet was found at?

12 A It says recovered, wall above number five video poker
13 machine.

14 Q And number 20, item number 20, according to your
15 results, which weapon could have fired this bullet?

16 A It could have been fired by the Exhibit Three, .45
17 caliber pistol.

18 Q And that's the .45 semiautomatic.

19 A That's correct.

20 Q And could it have been fired by either of the other
21 pistols?

22 A No, sir, it couldn't.

23 Q I show you State's Exhibit Ninety-seven. Can you tell
24 the jury what that is and if you examined it, sir?

25 A Exhibit Ninety-seven consists actually of a fired

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 bullet and also a fired bullet jacket fragment.

2 Q Can you read where that bullet was found?

3 A It says S. R. M. C. morgue from Dr. Wren. It's
4 described as being a bottle containing projectile taken from
5 victim arm.

6 Q And which gun could have fired that bullet?

7 A It could have been fired by the --

8 MR. GOWDY: Your Honor, may we approach for one moment?

9 THE COURT: Yes, sir.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 JUROR: His voice dropped, and I didn't hear. If he
13 could, say again where that one come from.

14 THE COURT: Yes, ma'am. Thank you very much. I am
15 sorry.

16 If you would, sir, sometimes when you are moving those
17 papers around it, it can cause that mike to cut off. So, be
18 mindful of that. If you happen to bump it, it will knock it
19 off.

20 THE WITNESS: Okay.

21 Q If you would, go ahead and repeat that if you would.

22 A Okay. It is described as being one bottle containing
23 projectile taken from victim arm, and location was listed as
24 S. R. M. C. morgue from Dr. Wren. And it contains a fired
25 bullet, and a bullet jacket fragment.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 Q And which pistol could have fired that, or fired that
2 bullet, sir?

3 A It could have only -- it couldn't have been fired by
4 the two revolvers. It could have possibly been fired by the
5 pistol, Exhibit Three pistol.

6 Q Exhibit Three, which this weapon here is stated on
7 that, is that right?

8 A That's correct.

9 MR. BARNETTE: One moment, Your Honor, please.

10 THE COURT: Yes, sir.

11 (Pause.)

12 Q Agent Whitler, item 20, and as well as item 97, the two
13 items that we just discussed, the bullet and the fragment,
14 if you just had these three pistols or three weapons, which
15 pistol is the only one that could have fired those?

16 A The Exhibit Three pistol is the only one that could
17 have possibly fired them of the three. The other two
18 firearms are the wrong caliber and have the wrong rifling
19 characteristics.

20 Q If you would, just publish to the jury and show them
21 which pistol would be the one.

22 If you would stand up and show the jury.

23 (Whereupon, the witness left the stand.)

24 A This is the only one of the three that could have fired
25 it.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 (Whereupon, the witness returned to the stand.)

2 Q Which caliber is that weapon, sir?

3 A It is .45 caliber.

4 Q And it is the only one that could have fired it?

5 A That's correct.

6 (SLED report dated March 9, 2000, marked State's
7 Exhibit Number Thirty for Identification.)

8 Q I would like to show you what has been marked as
9 State's Exhibit Number Thirty. Is this a copy of the report
10 that you submitted, sir?

11 A Yes, it is.

12 MR. KELLY: May we approach, Your Honor?

13 THE COURT: Yes, sir.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 Q Let me show you the other projectile, sir, if you
17 would. We have items 12 and 13 in this case. If you would,
18 take a look at those, sir.

19 A Okay, sir.

20 Q And what were those items, sir? Tell the jury.

21 A Exhibit Twelve is a fired bullet core that is
22 consistent with being a .44 caliber bullet core.

23 Exhibit Thirteen is also a bullet core, and it is most
24 consistent with being a .45 caliber jacket bullet core.

25 Q And items 14 and 15, if you would, look at those and

1 tell the jury what those are.

2 A Fourteen and 15 are two fired jacketed bullets, and
3 they are .45 caliber or consistent with being .45 caliber
4 bullets.

5 Q And which weapon would have fired those bullets, sir?

6 A That would have been Exhibit Three, the .45 caliber
7 pistol.

8 Q And that's semiautomatic, is that correct?

9 A That's correct.

10 Q And in items 20, we discussed already. Item 20 was
11 fired by the .45, is that correct, could have been fired by
12 the .45?

13 A Yes. It could have been. It could have been fired by
14 the other two pistols or revolvers. Excuse me.

15 Q Items 21 and 22. Can you see those two items and
16 explain to the jury what they are?

17 A Items 21 and 22 are fired bullet jacket fragments. And
18 I probably better explain what a jacket fragment is, and a
19 core. I just remembered I didn't explain that.

20 A jacketed bullet has a copper or an aluminum jacket
21 surrounding a lead core. When the bullet hits an object,
22 sometimes the jacket will peel away from the core, and so
23 you will have a lead core. And you will also have pieces of
24 the jacket, or the jacket itself. It's two separate items
25 or more if it fragments.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 So what items 21 and 22 are, are the outer covering of
2 the jacketed bullet.

3 Now, the jacket is the part of the bullet that comes in
4 contact with the barrel of the firearm. The core is inside
5 the bullet as it travels down the barrel, so it will
6 never -- it doesn't come in contact with the barrel. So,
7 there are no marks on it that you can identify to a firearm.

8 The jacket material is the material that you can
9 identify to a firearm or -- which gives you the rifling
10 characteristics of the firearm it was fired in.

11 And in this case items 21 and 22 are pieces of a bullet
12 jacket that were fired from a .44 caliber, or are consistent
13 with being .44 caliber jackets.

14 Q On the two items there, could they have came from the
15 same bullet, that jacket?

16 A Yes, sir. And in this case I was able to identify
17 these two jacket fragments as having been part of the same
18 jacketed bullet or part of the same jacket.

19 Q And so they were fired by a .44 but came from the same
20 bullet or the same jacket.

21 A Yes, sir.

22 Q Okay. In examining the weapons in this case, how many
23 shells does the .44 caliber weapon hold in the revolver?

24 A It holds five.

25 Q And when it was submitted to you, how many fired shells

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 was in it and how many fired shells was in it?

2 A When it was submitted to me, it was unloaded. I
3 received four unfired .44 Special cartridges and one fired
4 cartridge case.

5 Q So that would show that weapon being fired how many
6 times?

7 A Well, that would indicate that it had been fired one
8 time.

9 Q And the .45, how many shells can it hold?

10 A Depending on the magazine, it can hold eight, if it has
11 a proper magazine. The magazine will hold seven. And then
12 if you plug one in the chamber, that would give you a total
13 of eight, total cartridges.

14 Q And how many shells was fired from the .45 that was
15 submitted to you?

16 A Identified six of the cartridge casings as being fired
17 by the Exhibit Three pistol.

18 Q And the Exhibit Three pistol, if you would for the
19 jury, just explain which pistol that is, sir. What caliber?

20 A That's the one we have been holding up. It's the .45
21 caliber pistol.

22 Q And it's the semiautomatic, is that right?

23 A Yes, sir.

24 Q If you would, go back to item 20, if you would, Agent
25 Whitler.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A All right. Item 20 is a fired bullet jacket, and its
2 rifling characteristics were sufficient that, although I
3 couldn't identify it as being fired by the .45 caliber
4 pistol, it does have the same rifling characteristics as the
5 Exhibit Three pistol produces. It couldn't have been fired
6 by either of the two revolvers that were submitted.

7 Q Okay. And where was that item found, again, please?

8 A This was found above the number five video poker
9 machine.

10 Q And it was, out of the three pistols, fired from which
11 weapon, again?

12 A The only one it could have possibly been fired by would
13 have been the .45 caliber pistol.

14 Q If you would, take a look at item 97.

15 A Yes, sir.

16 Q Which weapon fired that bullet?

17 A Again, I can tell you that it wasn't fired by either of
18 the two revolvers that were submitted, which are Exhibits
19 One and Two.

20 It could have possibly have been fired by the Exhibit
21 Three pistol. Of the three that were submitted, it's the
22 only one that could have possibly have fired it.

23 Q And for the jury's information, which one is item
24 three, again, please?

25 A It's the .45 caliber semiautomatic pistol.

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 Q Okay. Just to touch base, items 14 and 15, if you
2 would, just tell the jury about those two items and which
3 weapon fired those, sir, or could have fired those.

4 A Items 14 and 15 or State's Exhibits Fourteen and
5 Fifteen are fired .45 caliber jacketed bullets. And of the
6 three submitted firearms, the only one that could have fired
7 these bullets would have been the Exhibit Three, the .45
8 caliber pistol.

9 Now, I wasn't able to identify the bullet as being
10 fired by that pistol due to damage and lack of marks, but
11 the rifling characteristics that are on these bullets are
12 sufficient to enable me to say that they weren't fired by
13 the other two revolvers.

14 Q So this is fired by the .45 semiautomatic.

15 A It could have been fired by the .45.

16 Q But could not have been fired from the two revolvers.

17 A That's correct.

18 Q Please answer any questions Mr. Morin may have for you.

19 THE COURT: Mr. Kelly.

20 MR. KELLY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. KELLY

23 Q Agent Whitler, you are a firearms examiner, is that
24 correct?

25 A That's correct.

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 Q And you are also an expert in firearms, are you not?

2 A Not exactly. I know a lot about firearms. I wouldn't
3 consider myself an expert on all firearms.

4 Q Okay. How long have you been in law enforcement?

5 A Started in 1968.

6 Q All right, sir. And since 1968 you have been issued a
7 revolver. And then later on at some point in time probably
8 issued an automatic, is that right?

9 A That's correct.

10 Q An automatic firearm is now the standard issue for all
11 law enforcement officers, is that right?

12 A That's generally the case.

13 Q Okay. And what caliber do you carry?

14 A SLED issues a .40 caliber.

15 Q .40 Caliber Smith and Wesson?

16 A Smith and Wesson.

17 Q All right, sir. What's the model number?

18 A The cartridge is called the .40 Smith and Wesson.

19 The -- it's a .40 caliber, and it is a Glock manufactured
20 pistol.

21 Q Right. It is similar to this firearm, is it not?

22 A Well, they are both semiautomatics. There are some
23 differences.

24 Q Right. One of the differences is that the side arm
25 that you carry holds more rounds than this weapon, is that

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 right?

2 A That's correct.

3 Q All right. This magazine -- and for some jurors who
4 may not be familiar, this item in the middle is called a
5 magazine, is it not?

6 A That's correct.

7 Q Okay. And this magazine -- this spring would be inside
8 that magazine, is that correct?

9 A That's correct.

10 Q And when bullets, a whole bullet, an unfired live round
11 is loaded for this weapon, it is loaded into that magazine,
12 is that right?

13 A That's correct.

14 Q And once seven rounds are in that magazine, that would
15 then be a fully loaded magazine, is that right?

16 A That's correct.

17 Q Okay. And in addition to that there are holes in this
18 magazine so that one can use partial loading, is that
19 correct?

20 A Not necessarily. Some manufacturers put holes to
21 indicate how many rounds there are. Others are put in there
22 merely to allow cleaning, and dirt to escape.

23 Q Okay, sir. But for whatever reason the manufacturer
24 put those holes in this magazine, if I wanted to partially
25 load an automatic weapon, I could see how many bullets that

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 I was putting in it by the shell, the bullet being in there,
2 is that right?

3 A That's correct.

4 Q Now, people don't generally -- if this holds seven
5 rounds, people don't generally load an automatic weapon with
6 one in the chamber, do they?

7 A Most people do.

8 Q Most people do?

9 A Yes.

10 Q Do you carry a live round chamber in your side arm?

11 A Yes, sir.

12 Q You do?

13 A If you don't, it actually won't fire.

14 Q Well, that's correct. But, also, if you have a live
15 round in that chamber and you dropped this weapon on its
16 hammer, it could fire, could it not?

17 A If it doesn't have a safety device, it might.

18 Q That's right. And this weapon -- do you see a double
19 safety on this weapon?

20 A It has a safety on it.

21 Q It has a safety on it, but it would not prevent that
22 hammer from coming in contact with that firing pin, would
23 it?

24 A Well, it has what is called a half cock. If you leave
25 it in that, that will generally prevent it. In some

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 pistols, like I said, internally they have safeties built
2 into them.

3 Q Yes, sir. But your Glock-issued pistol and this one
4 are not in the same league, are they? You wouldn't trade
5 the one you are carrying for one of this brand, would you?

6 A Well, not for that brand, no, sir.

7 Q Well, my point. This is a, this is a copy of the 1911
8 firearm, right?

9 A Yes, sir.

10 A Okay. And by that, what I mean by copy, it is an off
11 brand. It is a cheaper version of a fine weapon, right?

12 A Well, it was made, I believe --

13 MR. BARNETTE: Objection, Your Honor. We would say it
14 is irrelevant. If you would, just ask the question.

15 THE COURT: Yes, sir. I don't want you testifying.
16 How about asking him a question? Make it a direct question,
17 please.

18 MR. KELLY: Yes, sir.

19 Q Is this weapon made in the United States?

20 A No, sir, it's not.

21 Q Is this weapon an off-brand or a good-brand weapon?

22 A It's a pistol that is manufactured in Argentina for
23 the -- it was manufactured for the Argentinian government.

24 Like we have our pistols manufactured for our armed
25 services, they have it manufactured for theirs. So,

1 that's -- their government -- that's a government model, or
2 was.

3 Q All right. Now, this weapon, even though it has a half
4 cock as you have shown us here, if this weapon were dropped
5 from a sufficient height, could it go off?

6 A There's a possibility, yes.

7 Q Are people killed every year by dropping a firearm?

8 MR. BARNETTE: Objection, Your Honor. I don't know the
9 relevancy of this.

10 THE COURT: Overruled.

11 MR. KELLY: Thank you, Judge.

12 A Yes. I assume there are, yes.

13 Q And you have been in law enforcement since the 60's.

14 A Yes, sir.

15 Q Okay. And do you know that people are killed by
16 dropping firearms?

17 A I do know on occasions firearms have dropped and they
18 have discharged.

19 Q All right.

20 A Now, how many people actually are hit, I don't know.

21 Q Right. I know. But six spent casings were submitted
22 to you for examination, is that right?

23 A That's correct.

24 Q All right. There was one live round. Was it submitted
25 to you?

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 A Yes, sir.

2 Q Okay. That would be State's Exhibit Number Four, is
3 that correct?

4 A That's correct.

5 Q Okay. Now, looking at this round right here, is that a
6 copper jacketed round?

7 A Yes, it is.

8 Q Are bullets -- do bullets come with copper jacketing or
9 aluminum jacketing or any other type of jacketing?

10 A Yes, sir. They are made in various configurations.

11 Q All right, sir. And what is the purpose of the copper
12 jacketed round?

13 A The jacket is to protect the bullet or make the bullet
14 harder so that when -- for feeding purposes. It makes it
15 more reliable in feeding.

16 It also can be used, if it's a hollow pointed type
17 bullet, to prove the -- make the bullet expand in a certain
18 manner. It protects. It keeps the bore from leading up.
19 If you use lead bullets over a period of time, you get a
20 lead buildup that you have to clean. So, some people like
21 jacketed bullets for that reason.

22 Q All right, sir. Are jacketed bullets also used for
23 penetration?

24 A They -- yes. They are on there. Bullets are going to
25 penetrate pretty much anyway.

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 Q Well, yes, sir.

2 A But if you are trying to build a bullet for hunting,
3 you would put a heavier jacket on it than you would be for
4 one that's going to be for target practice.

5 Q Right, sir. And if you were looking for a bullet for
6 self-defense, what type of bullet would you want?

7 A It depends. Well, most people would want a jacketed
8 hollow point. It is really just whatever the person wants.

9 Q Right, sir. But this is not a hollow point.

10 A No, sir, it's not. It's what's known as a round nosed
11 bullet.

12 Q A round nosed bullet.

13 Okay, sir. Now, when this weapon fires do the bullets
14 stay, the shells, the spent casings, do they stay in this
15 firearm?

16 A No, sir. The cases would be ejected from the firearm.

17 Q Where would they be ejected from?

18 A They would be ejected from -- there is a slot milled
19 into the top of the slide, which when the pistol was fired,
20 the slide will go to the rear. And this becomes a hole,
21 which the fired cartridge case is ejected through.

22 Q And that casing would be ejected to the right, would it
23 not?

24 A Generally, they go out and to the right.

25 Q All right, sir. And it was designed that way, was it

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 not?

2 A Yes.

3 Q Okay. Would this one eject shell casings to the right?

4 A As I said, they generally go out and to the right. But
5 depending on how you hold the gun, the type of ammunition
6 you're using, the cartridge cases should go out generally to
7 the right. If they don't always go perfectly to the right,
8 they may go further back. They may go forward, may go to
9 rear.

10 Q Yes, sir. Let me turn this where you can see, Agent.

11 If someone were standing in this position and they were
12 holding that .45 like someone might would be straight ahead,
13 which direction would shell casings go?

14 A He is facing this way?

15 Q Yes, sir. He is facing the front.

16 A Oh, he is facing this way?

17 Q Yes, sir.

18 A So the gun is pointed this direction.

19 Q Yes, sir.

20 A They could go out. They would generally go out in this
21 direction, but then, depending on, again, the type of
22 ammunition, how he is holding the gun, you could find them
23 anywhere.

24 And once they hit the floor or hit any other object,
25 they will bounce. And you really don't know where they are

1 going to end up.

2 Q Now, again, for those who may not know, this is a
3 revolver.

4 A That's correct.

5 Q Would shell casings be ejected from a revolver?

6 A No, sir.

7 Q So, if this firearm were fired anywhere on that
8 diagram, no spent shell casings would be found anywhere
9 there, is that right?

10 A Not unless the cylinder was opened up and it was
11 unloaded.

12 Q In your experience with an automatic weapon, can an
13 automatic weapon jam?

14 A Yes, it can.

15 Q Is that considered one drawback of an automatic weapon?

16 A Well, it is a disadvantage. Depending on the guns, a
17 lot of them, they are very reliable for the most part.

18 Q Yes, sir. But, as you say, it is a disadvantage
19 between that and a revolver, is that correct?

20 A That's correct.

21 Q Tell the jury if this firearm jammed, what would that
22 look like? Just describe that to them.

23 A It depends on the type of jam you're talking about.

24 You have the possibility of several. You could have a
25 feeding jam where the cartridge case is not ejected from the

1 pistol, so the unfired cartridge is trying to go into the
2 chamber which is already occupied. So, the slide wouldn't
3 go all the way forward, and you would have a live round, or,
4 excuse me, an unfired cartridge on top of the fired
5 cartridge case which is still in the pistol.

6 Another possibility, that you would have one where it
7 didn't eject far enough and the cartridge case is caught in
8 the ejection port as the ejection port -- as the slide goes
9 forward. The cartridge case hasn't cleared or isn't thrown
10 completely clear of the pistol, and it is slammed shut on
11 the cartridge case. And you could have -- that's called a
12 stovepipe. That is just two of the possibilities you have.

13 Q If this firearm jammed, would it then fire again until
14 you did something to fix the jam?

15 A No. Until you remove the obstruction or cleared the
16 jam, the pistol is unable to be fired.

17 Q Right. What would be a procedure for clearing that
18 jam?

19 A It depends on the type of jam that you have, but in
20 most case it's going to involve pulling the slide to the
21 rear and removing the magazine.

22 Q So, if I had this, and I -- I can't do it because of
23 the bag, but if I were to move this slide to the rear like
24 so, that would be helpful in removing that jam, is that
25 correct?

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 A Right.

2 Q And then if that spent cartridge were caught there, it
3 would then eject, is that right?

4 A That's right.

5 Q After that would it have been fired?

6 A If you put an unfired cartridge into the chamber and
7 got the magazine back in it and the slide closed, yes.

8 Q Now, have you ever seen instances where someone
9 unjammed an automatic weapon and it take with it a live
10 round? Slide this half way back or so. And they --

11 A Yeah. It is possible that when they're clearing, they
12 take a cartridge out of the chamber, yes.

13 Q Right. Another cartridge pops up and falls to the
14 ground, is that right?

15 A Yes, sir.

16 Q And where was this cartridge found?

17 A It's listed as being found on the counter top, 366
18 Highway 221.

19 Q All right. Now, going back to this revolver, there is
20 something. This is not -- this is not a standard issue on
21 this revolver, is it, grips?

22 A No. These are after-market clips. They are rubber
23 grips with finger grooves.

24 Q And why would somebody buy rubber grips with finger
25 grooves?

1 MR. BARNETTE: Objection, Your Honor. That's
2 speculation on his part.

3 THE COURT: Sustain the objection.

4 Q Have you ever purchased rubber grips for a firearm?

5 MR. BARNETTE: Objection, Your Honor. Relevancy.

6 THE COURT: Overruled. He can answer that.

7 A Yes, I have.

8 Q Why did you do that?

9 A Because the grips that came on the gun were poorly
10 designed for my hand.

11 Q Okay. Were those grips oversized grips?

12 A They filled in a little more than the original grip,
13 but they weren't really considered oversized.

14 Q In your experience of law enforcement have -- are you
15 familiar with this particular weapon, a Charter Arms .44
16 Bulldog?

17 A Yes, sir.

18 Q Okay. And the standard grip that would come on this,
19 would they be bigger or smaller than these grips?

20 A They would be smaller.

21 Q Do oversized grips help you control the firearm better
22 when firing it?

23 A Not necessarily.

24 Q A request was made in 1999 for a test. Let me show you
25 this. What is that word?

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 A Trace.

2 Q Okay. What is a trace exam?

3 A That's looking for gunshot residues.

4 Q Okay. Did you perform that on --

5 A No. That's not my department.

6 Q Okay. Agent, if I were standing -- if you and I were
7 in a room that was no larger than from where you are seated
8 to where I am standing and no wider than this courtroom as
9 we see it here, if we were in that environment right here
10 and you, someone, anyone, you, the bailiff, discharged one
11 of those firearms, the .45 or the .44, can you describe what
12 that would sound like or do?

13 MR. BARNETTE: Objection, Your Honor. I think it would
14 be speculative at this point.

15 MR. KELLY: Judge, can I be heard?

16 THE COURT: Y'all can approach.

17 MR. KELLY: Thank you.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. You can continue with your
21 question. Excuse me just a minute, please.

22 All right. Now you can continue.

23 MR. KELLY: Thank you, Judge.

24 Q Again, if we were in this closed environment that's as
25 we have described here and one of those, either a .44 or .45

Kenneth H. Whitler
Cross-examination by Mr. Kelly

1 were discharged, were fired, can you describe to the jury
2 what that would sound like?

3 A It would be -- it would make a noise.

4 Q Yes, sir.

5 A Depending on what's in the room, is it, what the room
6 is made of. If it is concrete block, it may sound louder.
7 If it has got a lot of objects in the room, it may sound
8 muffled. It's very hard to describe what somebody else
9 would notice.

10 Q All right, sir. Would it ring your ears?

11 A I can't really say.

12 Q When you go to a firing range do you wear --

13 MR. BARNETTE: Objection, Your Honor. I think we are
14 getting into speculation.

15 THE COURT: Sustain the objection.

16 MR. KELLY: Thank you, Judge.

17 Q One of the firearms, according to your report, was
18 rusty, is that right? It had to be oiled, is that right?

19 A That's correct.

20 Q Which one was that?

21 A That was Exhibit One. That was the .44 caliber
22 revolver, Charter Arms.

23 Q And, also, I believe your report said some blood or
24 something or what could have been blood was not collected,
25 is that right? Did I understand that correctly?

Kenneth H. Whitler
Redirect examination by Mr. Barnette

1 A Where are you referring to?

2 (Pause.)

3 Q This. I'm sorry. Is that what that is telling you?

4 A Yes, sir. I noted something that looked like
5 blood-like material, but I didn't collect it because the gun
6 had already been swabbed by evidence processing.

7 Q All right. Thank you very much, Agent.

8 THE COURT: Redirect.

9 MR. BARNETTE: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. BARNETTE

12 Q Agent Whitler, if somebody was firing a weapon could
13 you tell where they were firing from just where the shell
14 was found?

15 A Just from where the cartridge case was found?

16 Q Yes, sir. Or the cartridge case. Could you explain
17 why you couldn't find it?

18 A The problem is although pistols generally eject to the
19 right, there is some variation, again, depending on how you
20 hold it, the type of ammunition you are using.

21 There can be variation from shot to shot. Where one
22 may land directly ninety degrees to my right, another one
23 may be up toward the front. Another one could be to the
24 rear.

25 I've also known of pistols that while they shot most to

1 the right, every now and then they would shoot one straight
2 back and hit you in the head. That's one problem you have
3 trying to determine where someone's standing by where you
4 find a cartridge case.

5 The other problem is that when the cartridge case hits,
6 unless it's on a sticky surface, that it immediately stops
7 it. It doesn't travel any further. You've got the problem
8 that on hard surfaces they can bounce, and bounce into other
9 objects. Once they do that, they can tumble and go
10 anywhere.

11 Also, when it's in a law enforcement situation where
12 you have people responding to a crime scene, E. M. T.
13 personnel and others, cartridge cases can be kicked, or you
14 don't know where they are going to end up.

15 So, to say -- look at a cartridge case on the floor and
16 try to determine exactly where somebody was standing, I
17 think you are taking a lot of liberties that you don't have
18 the right to.

19 Q Like if you fired one of the weapons, it could hit a
20 wall or anything and bounce anywhere.

21 A Once they bounce, they can go. As a demonstration one
22 time for some prosecutors I dropped three cartridge cases on
23 the floor, or four. Excuse me.

24 One hit the carpet and just stayed put; one bounced and
25 went about three feet to the right -- the other one about

1 three feet to the right; the other one bounced once and then
2 hit a wall and bounced behind a couch. And it ended up six
3 or seven feet away behind a couch.

4 So, I mean, if you are trying to put that in
5 relationship to where the pistol would be, it would really
6 be unusual.

7 So, if you have a situation where they can hit other
8 objects or hard floors and bounce and then maybe hit another
9 object on the second bounce, it's very hard to tell where
10 somebody is shooting from.

11 Q And somebody could be standing. And let me show you
12 this diagram right here. It's marked as Exhibit Number
13 Thirty-one for I. D. purposes. Somebody could be standing
14 there and it eject to this side and hit something and go
15 back.

16 A If it --

17 Q I will let you have it.

18 A If I am understanding the question, you are asking if
19 someone is standing here and shoots, it ejects -- hit
20 something here and then bounce over there. That's entirely
21 possible.

22 You also have to consider that how they are holding the
23 gun. If you hold it tighter, it sometimes, or looser, it
24 makes the gun recoil differently, and that makes the
25 cartridge cases eject slightly different.

Kenneth H. Whitler
Redirect examination by Mr. Barnette

1 Also, if they've been -- if someone has watched a lot
2 of television and they're doing the -- the current fad of
3 holding it sideways, you've cartridge cases now going to the
4 left instead of to the right.

5 So, that's why I said it's very -- if you know exactly
6 how they are holding the gun and how far it was above the
7 floor, and was it in the same position for each shot, the
8 type of ammunition they were using, these are all variables
9 you have to consider.

10 MR. BARNETTE: One second, please, Your Honor.

11 Q Please answer any questions Mr. Kelly has.

12 THE COURT: Recross, Mr. Kelly?

13 Thank you, sir. You may step down, Agent Whitler.

14 Are you asking that he be excused?

15 MR. BARNETTE: Yes, sir.

16 THE COURT: Without objection. I appreciate you
17 coming.

18 MR. BARNETTE: We would like to --

19 THE COURT: He is not excused. All right. Thank you
20 very much, Agent Whitler. You are not excused.

21 MR. BARNETTE: I would like to call Joe Powell to the
22 stand, Your Honor.

23 JOSEPH D. POWELL, having been first
24 duly sworn, testified as follows:

25 THE COURT: Please state your name for the record. And

Joseph D. Powell
Direct examination by Mr. Barnette

1 spell your last name, sir.

2 THE WITNESS: My name is Joseph D. Powell, P-O-W-E-L-L.

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, please, tell the jury what you do.

5 A I am currently supervisor over the trace evidence
6 section at the South Carolina Law Enforcement Division,
7 commonly known as SLED.

8 My responsibilities are that I supervise the personnel
9 of the department, look over the protocols and methods and
10 help develop various methods we use in the laboratory.

11 I am also the training officer. Every person that
12 comes into my department, I work underneath me for at least
13 three years in the area of trace evidence analysis.

14 I'm also responsible for a case load that comes in, as
15 well as going to various universities and colleges and
16 lecturing and dealing with various aspects within trace
17 evidence.

18 Q And how long have you been doing trace evidence?

19 A Going on 20 years.

20 Q And how many times have you testified in court about
21 trace evidence?

22 A Well, I have testified in courts on trace evidence
23 approximately 300 times. I have also testified another 300
24 plus times in the area of drug analysis.

25 MR. BARNETTE: Your Honor we would submit that he is an

Joseph D. Powell
Direct examination by Mr. Barnette

1 expert in trace evidence.

2 THE COURT: Questions concerning his qualifications?

3 MR. KELLY: No, sir.

4 THE COURT: You may continue.

5 MR. BARNETTE: Thank you, Your Honor.

6 Q Deputy Powell, I would like for you to take a look at
7 State's Exhibits Ninety-eight and Ninety-nine and see if you
8 are familiar with those items.

9 A Yes, sir. What's listed as State's Exhibit
10 Ninety-eight is a yellow envelope containing within it a
11 white envelope which is called a gunshot residue kit.

12 We also have what is listed as State's Exhibit
13 Ninety-nine, the same. I do recognize these, as they bear
14 my initials, so this is the evidence that I have actually
15 opened and analyzed.

16 Q Did you perform those analyses on those two items?

17 A Yes, sir.

18 Q And could you tell the results of the findings that you
19 found doing those two G. S. R. kits, gunshot residue kits?

20 A Yes, sir. One of these kits was a kit from Richard
21 Moore. I found on those kits round lead particles on the
22 right palm, right back and left palm regions of the hands.
23 Round lead particles are one of the components that are
24 found in what's called gunshot residue. And if I may --

25 Q Yeah. If you can, please explain what gunshot residue

Joseph D. Powell
Direct examination by Mr. Barnette

1 is, please.

2 A Whenever a weapon is discharged, there is a gray or
3 bluish cloud that will come out of the end of that weapon's
4 barrel or maybe out from the sides of it.

5 It will come out and will envelop the hands of someone
6 who is holding the weapon. This material is called gunshot
7 residue. It is a mixture of materials which is called gun
8 primer, materials which is found in the cartridge case, as
9 well as debris that is being scuffed off the barrel as it is
10 pushed down, the bullet is being pushed down the barrel.

11 This material, once deposited on the hands, may be
12 collected by the use of a gunshot residue kit. This kit is
13 composed of two components. One is a set of particle lift
14 which are nothing more than a flattened piece of aluminum
15 with a sticky substance on it which allows you to be able to
16 pick up any material or debris that's found on the surface
17 of the hands.

18 We then follow up the test with come cotton swabs
19 that's been wetted with a weak acid solution to mop up any
20 residue that may have been left.

21 These two items are submitted to our laboratory. We
22 then take a run analysis on them to determine if we can find
23 this material.

24 The first one, the cotton swabs, we look to see if we
25 can find this elemental concentrations of materials. The

Joseph D. Powell
Direct examination by Mr. Barnette

1 second one, the particle lift, we actually look for the
2 physical particles. In this case I did find the physical
3 particles I was looking for, which were round leads. And I
4 found those in the aforementioned areas of the hand.

5 Q And what was the results that it showed? Did that show
6 conclusive gunpowder residue on his hands?

7 A The material found is consistent with what we would
8 find or what we can find in gunshot residue. This is not
9 normal lead particles. These are specialized lead
10 particles, because they actually have a specific shape to
11 them, a shape which can only occur if they go through a
12 process of extreme heating and exposure to certain
13 conditions such as high pressure. These are conditions that
14 you will find when you discharge a weapon.

15 Q And did he have positive results?

16 A Yes, sir. We had positive results on the right palm,
17 right back and left palm regions of the hands.

18 Q And what would that show?

19 A Well, that would mean that Mr. Moore would have either
20 been around a weapon when it was fired, meaning that his
21 hands were somewhere near this cloud and would have gotten
22 material on it, or that he actually discharged a weapon so
23 that he would get this material on his hands.

24 Q Going to the next examination you did on the other gun
25 residue kit, could you tell us about that one?

Joseph D. Powell
Direct examination by Mr. Barnette

1 A Yes, sir. The other one was a sample submitted from
2 the kit named James Mahoney. Here I found round lead
3 particles on the right palm, right back and left -- left
4 back regions of the hands.

5 Again, the same information is that I have got
6 materials on certain regions of the hands. They are round
7 particles, and, again, they are associated with gunshot
8 residue.

9 There was one other area that we looked at which was
10 the left palm. It was inconclusive. We had some indication
11 there was some material there, but not enough to make a
12 confirmation.

13 Q So what would this show also?

14 A Again, the same scenario. He has either discharged a
15 weapon or he has been near a weapon when it has been fired.

16 Q Let me move you on to -- did you examine a shirt and a
17 button in this case?

18 A Yes, sir, I did.

19 Q Let me show you State's Exhibit Number One Hundred,
20 sir. If you would, take a look at that.

21 A Yes, sir. State's Exhibit One Hundred is a Manila
22 envelope which originally had contained a white button.

23 Q And, if you would, take a look at State's Exhibit
24 Number Ninety-five. Is that the shirt, white and blue
25 shirt, you examined?

Joseph D. Powell
Direct examination by Mr. Barnette

1 A State's Exhibit Number Five (sic) is a paper bag which
2 contains the initials that we had opened it up, and this
3 would contain the shirt inside.

4 Q And let me show you what's been marked as State's
5 Exhibits Forty-three and Forty-four. Are these pictures
6 that you did from your examination of the button and the
7 shirt?

8 A Yes, sir. When we opened up the case and we found both
9 the button and the shirt, we took some photographs, digital
10 photographs, of the shirt and also the buttons to show what
11 we were seeing. What's listed as State's Exhibit
12 Forty-three --

13 THE COURT: Is that in evidence yet?

14 MR. BARNETTE: No, sir, it is not.

15 THE COURT: Don't show it to the jury then.

16 MR. BARNETTE: Your Honor, we would like to move these
17 in as State's Exhibits Forty-three and Forty-four at this
18 time.

19 THE COURT: Any objection?

20 MR. MORIN: No, sir.

21 THE COURT: Without objection, they are admitted.

22 (Photograph marked State's Exhibit Number Forty-three;
23 photograph marked State's Exhibit Number Forty-four.)

24 Q Lieutenant, if you would, please, show the jury what
25 you examined about this shirt.

Joseph D. Powell

Direct examination by Mr. Barnette

1 A When we opened up the shirt we noticed immediately that
2 we do -- if I may back up, we do a visual examination on the
3 garment to see if there is any strange materials, tearing,
4 anything that we can see which is unusual from what we
5 normally would find with a shirt.

6 We noticed that there was a button missing, and a
7 little bit lower on this photograph there is another --
8 there is two buttons actually missing on this garment.

9 We noticed also that the fibers where the button was
10 attached had been torn up from the garment, meaning this
11 button did not fall off just from natural wear. It had been
12 grabbed and pulled, and it actually pulled some of the
13 fibers from --

14 MR. MORIN: Objection. Speculation.

15 THE COURT: Overruled.

16 A It had pulled the fibers from in the garment up, the
17 blue fibers which make up the blue striping of the garment.

18 We then opened up the packaging to look at the bottom
19 that had been submitted.

20 These two -- these pictures are the two buttons that
21 were submitted to us. They still contained the fibers
22 within the buttonholes.

23 We looked at these buttons, and we looked also back at
24 the garment itself and looked at those and compared those
25 buttons and found that they are visually the same. There is

Joseph D. Powell
Direct examination by Mr. Barnette

1 no difference on those buttons at all. They could have come
2 from that shirt, because they match up perfectly with the
3 other buttons on that shirt.

4 Q Let me ask you again. Going back to right there --

5 A Yes, sir.

6 Q -- what was that, again, if you could explain it to the
7 jury?

8 A That is the cotton fiber which holds the button on to
9 the garment, but there is also some little, small blue
10 fibers that are found there with it too. But it's the
11 fibers which are found in the button that holds it on to a
12 garment.

13 Q And this button, was it similar to the one that was
14 found, the other buttons, on the shirt?

15 A Yes, sir. They are identical. They are identical in
16 shape, the color, every aspect of it. It would be as if you
17 had a container of buttons, and they would be all the same.
18 They all had the same characteristics.

19 MR. BARNETTE: One moment, Your Honor, please.

20 (Pause.)

21 Q Please answer any questions Mr. Kelly or Mr. Morin may
22 have for you.

23 A Yes, sir.

24 Q Thank you.

25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION

2 BY MR. MORIN

3 Q In examining this gunshot did you -- does that tell you
4 anything about what type or what kind of weapon would have
5 been fired in the area?

6 A No, sir. All weapons will produce gunshot residue.
7 The residue being deposited in the hands do not tell us the
8 type of weapon it may have come from.

9 There is some indication sometimes from concentrations
10 that you may have indication, let's say, a small weapon,
11 which will give a smaller amount than the larger caliber,
12 but that's about all you can make out of it.

13 In this case there was no conclusions that I could draw
14 as to what type of weapon it was.

15 MR. MORIN: That's all.

16 THE COURT: Redirect.

17 MR. BARNETTE: No further questions of this witness,
18 Your Honor. We would ask that he be excused.

19 THE COURT: Thank you, Agent Powell. You may step
20 down, sir.

21 And, without objection, you are excused.

22 (Whereupon, the witness was excused.)

23 THE COURT: Ladies and gentlemen of the jury, we are
24 going to take a short break at this particular point in
25 time.

Joseph D. Powell
Cross-examination by Mr. Morin

1 As I send you to the jury room, let me remind you, once
2 again, you are not to discuss this case among yourselves
3 while you're there. We will get you back in just a very few
4 minutes.

5 The jury may retire. Everyone else remain seated,
6 please.

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

9 THE COURT: All right. We are going to take about ten
10 or 15 minutes.

11 Sometimes the jury likes to smoke during their breaks,
12 and that takes us a little bit longer if that is the case.
13 As I say, we'll take 15 minutes.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Is the state and the defendant
16 ready?

17 MR. WILLINGHAM: The state is ready, Your Honor.

18 MR. MORIN: The defendant is ready..

19 THE COURT: Let's bring them back.

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

22 THE COURT: Thank you very much, ladies and gentlemen.
23 Next witness.

24 MR. WILLINGHAM: The state calls John Ortuno.

25 MANUEL J. ORTUNO, having been first

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 duly sworn, testified as follows:

2 THE COURT: Please state your name for the record, and
3 spell your last name, sir.

4 THE WITNESS: Manuel John Ortuno, O-R-T-U-N-O.

5 DIRECT EXAMINATION BY MR. WILLINGHAM

6 Q Mr. Ortuno, where do you work?

7 A The South Carolina Law Enforcement Division, commonly
8 referred to as SLED.

9 Q How long have you been with SLED?

10 A A little over 11 years.

11 Q And what do you do for them?

12 A I'm a forensic D. N. A. analyst.

13 Q And what type of training and education and background
14 do you have to allow you to perform your duties?

15 A I graduated with honors from the American University in
16 Washington, D. C. with a bachelor of science degree,
17 majoring in chemistry.

18 I have a masters degree, also majoring in chemistry,
19 from the University of South Carolina at Columbia.

20 I'm a graduate of the South Carolina Criminal Justice
21 Academy. I was hired as a researcher at the university in a
22 molecular genetics lab where I performed experiments on D.
23 N. A.

24 This work over the course of three and a half years led
25 to two publications in peer review journals.

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 I've also completed training at SLED approximately two
2 years in length in forensic serology and D. N. A. under the
3 direct supervision of court-qualified examiners in the
4 field.

5 I have also trained with the F. B. I. in Quantico,
6 Virginia, the F. B. I. academy, the armed forces human -- of
7 human identification division, scientists from Perkin-Elmer
8 which is the company that makes the instrument that we use
9 for D. N. A. analysis.

10 I have also attended numerous conferences and seminars
11 throughout the U. S. pertaining to my field of expertise.

12 Q Is forensic serology a part of D. N. A. analysis?

13 A It is the first step that leads to D. N. A. analysis.

14 Q Explain to the jury what forensic serology is.

15 A When we receive evidence at SLED, the first question
16 that we have is to identify this evidence, either the
17 evidence itself or something on the evidence, as originating
18 from a human being.

19 And so the serology component is typically the
20 identification of human blood, semen, saliva, any component
21 that might originate from a human.

22 Q And, if you would, tell the jury in terms that I can
23 understand it, what D. N. A. analysis is.

24 A The D. N. A. component of our analysis involves the
25 individualization or characterization of that human sample

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 as possibly belonging to one individual versus another
2 individual.

3 So what we basically do is we take the D. N. A. And we
4 identify nine regions on the D. N. A. strand that gives us a
5 profile for that individual.

6 We compare the unknown profiles from the evidence to
7 the known profiles from victims and subjects. And if they
8 match, they are a D. N. A. match.

9 Q Have you ever testified as an expert in forensic
10 serology and D. N. A. analysis before?

11 A Yes, I have.

12 MR. WILLINGHAM: Your Honor, at this time I would ask
13 the Court to find him qualified to render an opinion as an
14 expert in the area of forensic serology and D. N. A.
15 analysis.

16 THE COURT: Questions concerning his qualifications?

17 MR. MORIN: No, sir.

18 THE COURT: You may continue.

19 MR. WILLINGHAM: Thank you, Your Honor.

20 Q You told us what D. N. A. analysis is and forensic
21 serology is. What is D. N. A. itself?

22 A D. N. A. stands for deoxyribonucleic acid. That's a
23 very large complex molecule. It's found in essentially
24 every cell of the human body. It's found packaged within
25 the nucleus in what are called chromosomes. We have a total

1 of 46 chromosomes that are paired, so we really have 23
2 chromosome pairs.

3 I state this because each pair is an equal contribution
4 of the mother and the father of the individual in question.

5 Now, most of our D. N. A. is the same. That's because
6 we all need bones and kidney cells and liver cells and the
7 hundreds of proteins and enzymes that are necessary for our
8 daily function.

9 However, all you need to do is look around this
10 courtroom. And just as we have physical differences that
11 are visible to the human eye, there are many differences
12 within our D. N. A. molecule. And we focus on nine specific
13 regions which are called S. T. R., which stands for short
14 tandem repeat regions.

15 These are regions that vary between us. And just as I
16 have a size 11 shoe or shoes that I am wearing today, there
17 is probably somebody else in this courtroom that might also
18 have a size 11 shoe.

19 Among these nine regions of D. N. A. that we look at,
20 different people have different lengths. Each region has a
21 contribution or length of D. N. A. from the mother and one
22 from the father.

23 By isolating and identifying these nine regions, each
24 of which has the contribution from the mother and the
25 father, we arrive at a D. N. A. profile. We do the same

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 thing for unknown evidence that is found at the crime scene.

2 We then compare the known samples of individuals to the
3 unknown samples of the evidence and determine whether or not
4 they are a match.

5 Q In this particular case did you receive numerous items
6 of evidence from the Spartanburg County Sheriff's Department
7 to be analyzed for D. N. A. in serology?

8 A Yes, I did.

9 Q In addition to the evidence that you received did you
10 also receive a sample of blood from the defendant, Richard
11 Bernard Moore?

12 A Yes, I did.

13 Q I am going to show you what's been marked State's
14 Exhibit 1.1.

15 A Yes, sir.

16 Q What is that?

17 A This is what we call a coin envelope containing what's
18 identified as a swab from gun. State's Exhibit 1.1 has my
19 initials on the bottom, which means that I processed or
20 worked this evidence.

21 MR. WILLINGHAM: I beg the Court's indulgence. This
22 will take a second for this to come back up.

23 THE COURT: Yes, sir.

24 Q Officer, let me show you State's Exhibit 1.2 and if you
25 received that piece of evidence.

Manuel J. Ortuno

Direct examination by Mr. Willingham

1 A Yes. Likewise, State's Exhibit 1.2 is another coin
2 envelope containing a swab from pistol, is the
3 identification on the envelope. It also has my initials on
4 it.

5 Q And both of those items had -- not only State's
6 Exhibits 1.1 and 1.2, but SLED 1.1 and 1.2 as well, right?

7 A That's correct.

8 Q And showing you State's 3.1 and 3.2, do you recognize
9 those?

10 A Yes. They also contain my initials, so they were
11 processed by me.

12 Q And those were received from who?

13 A Let's see. I collected this evidence from what we call
14 the D. N. A. processing room on the third floor, which is
15 our laboratory storage area.

16 Q And from the overhead, State's Exhibit Number
17 Thirty-nine already into evidence, which shows a diagram as
18 testified to yesterday.

19 State's Exhibit 1.1 corresponds with swab taken from
20 this location. That's SLED number 1.1, which is from the
21 .44 caliber, is that correct?

22 A That worksheet, as well as this item, was collected by
23 our D. N. A. technicians, actually our evidence processing
24 technicians.

25 Q Which would have been Lisa Kiser.

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 A Lisa Kiser in this particular case, yes.

2 Q And she has testified that samples --

3 MR. MORIN: Objection. The gentleman doesn't know what
4 the other person testified to.

5 THE COURT: Well, sir, I believe that he can say what
6 he's based it upon. If you need to do that, why don't you
7 do so?

8 MR. WILLINGHAM: Thank you, Your Honor.

9 Q Ms. Kiser did testify yesterday that samples 1.1 and
10 1.2 came from the .44 caliber gun. Samples 1.1 and 1.2 were
11 submitted to you for analysis, is that correct?

12 A That's correct.

13 Q And what did you do with those items as far as
14 analysis?

15 A What I did in this particular case with these items was
16 the serology component of it. I took the samples and
17 determined, first with the presumptive test for blood and
18 then with the definitive test for human blood, whether, in
19 fact, human blood was present on these items.

20 Q And was human blood present?

21 A Yes, it was.

22 Q Is that a presumptive test or is that a conclusive
23 test?

24 A The second test is a conclusive test for human blood,
25 and it was positive.

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 Q So, there is no question samples, State's Evidence 1.1
2 and 1.2, contain human blood.

3 A No question.

4 Q Now, did you further process those to get them ready
5 for D. N. A. analysis?

6 A Yes, sir. Those, along with others, were collected,
7 cut, placed in tubes, and then a series of chemical
8 reactions are effected on these tubes to extract or separate
9 the D. N. A. from all of the cellular components that we
10 really are not concerned with.

11 And then once that's performed, the D. N. A. is
12 quantitated to determine how much is there. And then I turn
13 it over to Agent Lambert.

14 Q And Agent Lambert, what was his role?

15 A His role was actually to carry out the final stages of
16 D. N. A. analysis, the amplification of those nine regions
17 that I mentioned that make up the D. N. A. profile for
18 either the individual or the evidence in question.

19 Q Referring you to State's 3.1 and 3.2, Agent Kiser
20 testified yesterday that those items came from 3.1, 3.2,
21 handle of the .45 caliber. Did you process those items of
22 evidence?

23 A 3.1 and 3.2. Yes, I did.

24 Q And what was the process involved there? What did you
25 determine?

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 A The same as the earlier samples. These were also
2 tested for the presence of human blood, and they were
3 identified both as containing human blood. They were also
4 extracted for D. N. A. isolation and identification.

5 Q Conclusively human blood, correct?

6 A Yes, sir.

7 Q And you forwarded those to Agent Lambert for further D.
8 N. A. analysis.

9 A Once they were processed for D. N. A., yes.

10 Q I am showing you what's been marked as State's Exhibit
11 Number Twenty-seven and ask if you received that piece of
12 evidence.

13 A Yes, I did.

14 Q On State's Exhibit Number Twenty-seven, where does it
15 say that sample came from?

16 A The evidence description listed on this item states
17 from -- it says blood sample, swab four, is what this says.
18 Oh, location of recovery. I'm sorry. It says 366 Highway
19 221, floor front of -- I can't tell what that last word is.

20 Q The counter?

21 A Counter, yes.

22 Q Did you perform any analysis on that item?

23 A Yes, sir, I did.

24 Q And what type of analysis did you perform on that?

25 A I also first determined for the presence or absence of

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 human blood, and then I -- I am not sure. Yes. Then I went
2 ahead and extracted it for D. N. A.

3 Q And gave it to Agent Lambert?

4 A Yes, sir.

5 Q State's Exhibit Number Thirty-six. Can you tell me
6 where that came from?

7 A Also, location of recovery, 366 Highway 221, floor
8 behind chair, I believe, is what it says.

9 Q Again, did you perform an analysis on that?

10 A Yes, sir, I did.

11 Q And what did you determine?

12 A Human blood identified, and then the D. N. A. was
13 extracted for further processing.

14 Q And given to Agent Lambert?

15 A Yes, sir.

16 Q I show you what's been marked as State's Exhibit Number
17 83.1 and 83.2 and ask if you received those items.

18 A Yes, I did. My initials are on both.

19 Q And where do those items indicate they were swabbed
20 from?

21 A State's Exhibit 83.1 is a swab from meat cleaver.
22 State's Exhibit 83.2 is a swab from the handle of meat
23 cleaver.

24 Q And did you perform analysis on those?

25 A Yes, sir, I did.

Manuel J. Ortuno
Direct examination by Mr. Willingham

1 Q And what was the result?

2 A Human blood was identified, and it was further
3 processed for D. N. A.

4 Q I show you what's been marked as State's Exhibit 94.1
5 and 94.2 and 94.3.

6 A Yes, sir.

7 Q Where do those indicate they came from?

8 A State's Exhibit 94.1, .2 and .3, all three of them, are
9 from cuttings from jeans.

10 Q Okay. I am showing on the overhead State's Exhibit
11 Number Forty-one which indicates 94.1. Lisa Kiser testified
12 yesterday 94.1 came from the leg and 94.2 and 94.3 are from
13 the leg of the pair of jeans. What analysis did you perform
14 there?

15 A I also performed human blood analysis first,
16 identification, and then D. N. A. analysis or extraction
17 after that.

18 Q What was the results of the blood test?

19 A The results of the blood test, on all three human blood
20 was identified.

21 Q And you quantitated D. N. A.

22 A Yes, sir.

23 Q And forwarded to Agent Lambert.

24 A Yes, sir.

25 Q I show you 95.1 and 95.2. Did you receive those?

Manuel J. Ortuno
Direct examination by Mr. Willingham

- 1 A Yes, sir, I did.
- 2 Q Where did they indicate they came from?
- 3 A Both are cuttings from shirt.
- 4 Q Showing on the overhead, State's Exhibit Number
- 5 Forty-two. That shows 95.1 in this area; 95.2 in this area;
- 6 and 95.3 in this area. Did you perform an analysis on those
- 7 items?
- 8 A Yes, sir, I did.
- 9 Q And 95.1 and 95.2. Any results as far as human blood
- 10 identification?
- 11 A Yes. Human blood was identified on both items.
- 12 Q Was D. N. A. quantitated on that?
- 13 A Yes, sir.
- 14 Q And forwarded to Agent Lambert?
- 15 A That's correct.
- 16 Q And you also received the defendant's blood sample.
- 17 A Yes, sir, I did.
- 18 Q And that would be State's Exhibit Number Eighty, SLED
- 19 Number Eighty, is that correct?
- 20 A Richard Moore, yes, sir.
- 21 Q And what analysis did you perform on that item?
- 22 A That was used as one of the known samples to generate a
- 23 known D. N. A. profile to compare it to the unknowns from
- 24 the evidence.
- 25 Q And did you likewise take a quantitative sample of that

Manuel J. Ortuno
Cross-examination by Mr. Morin

1 blood?

2 A The blood is received in liquid form. It's placed on a
3 cloth, dried on a cloth overnight. Then that dried sample
4 is what is used to then extract the D. N. A. for the known
5 individual.

6 Q And that's what you did in this case.

7 A Yes, sir. I did.

8 Q And forwarded that D. N. A. onto Agent Lambert.

9 A Yes, sir.

10 Q Would you please answer any questions the Court or the
11 defense counsel may have for you?

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. MORIN

15 Q You testified as to the location of several of these
16 items, is that correct?

17 A I testified based on the writing on each of the coin
18 envelopes.

19 Q And you didn't put that writing on there, did you?

20 A No, sir, I did not. That was placed by the evidence
21 processing technician.

22 Q And do you have any knowledge of how this blood got to
23 these areas that you have described, or described on this
24 form?

25 A No, sir, I do not.

Manuel J. Ortuno
Cross-examination by Mr. Morin

1 Q You sent a report, or your report was sent with your
2 findings back to someone here in Spartanburg.

3 A The investigating officer is listed on the log-in sheet
4 as the one that receives a copy, as well as a copy is sent
5 to the solicitor's office.

6 Q Who is that?

7 A Both reports. My report was sent to Investigator
8 Stephen L. Denton.

9 MR. MORIN: That's all I have.

10 MR. WILLINGHAM: No redirect, Your Honor.

11 THE COURT: Thank you, sir. You may step down, Agent
12 Ortuno.

13 MR. WILLINGHAM: We would ask that Agent Ortuno be
14 excused.

15 THE COURT: Without objection, you are excused, sir.
16 Thank you for coming.

17 (Whereupon, the witness was excused.)

18 MR. WILLINGHAM: The state calls Steve Lambert.

19 STEPHEN J. LAMBERT, having been
20 first duly sworn, testified as follows:

21 THE COURT: Please state your name for the record, and
22 spell your last name, sir.

23 THE WITNESS: Steve Lambert, L-A-M-B-E-R-T.

24 DIRECT EXAMINATION BY MR. WILLINGHAM

25 Q Agent Lambert, where do you work?

Stephen J. Lambert
Direct examination by Mr. Willingham

1 A With the South Carolina Law Enforcement Division.

2 Q And you are a D. N. A. analyst.

3 A Yes, sir.

4 Q What type of background and training have you had to
5 allow you to do your job?

6 A I have a bachelors degree in chemistry. I have a
7 doctorate degree from U. S. C., 1990, in biochemistry. I
8 have attended the F. B. I. Academy and taken their D. N. A.
9 training class in laboratory methods, and also on the theory
10 of D. N. A. in Quantico, Virginia, and received graduate
11 credit from that from the University of Virginia.

12 I have been a visiting scientist at the F. B. I.
13 Research Center there in Quantico in the summer of 1990.

14 I have attended numerous seminars and symposium and
15 taken additional class work, specifically dealing with
16 forensic D. N. A.

17 And I have also trained under the direction of the
18 court-qualified analysts in the SLED laboratory on how to
19 handle forensic evidence and perform serological tests.

20 Q Have you ever been qualified as an expert in D. N. A.
21 analysis before?

22 A Yes, sir.

23 MR. WILLINGHAM: Your Honor, at this time I offer Agent
24 Lambert to render an opinion as an expert in the area of D.
25 N. A. analysis.

Stephen J. Lambert
Direct examination by Mr. Willingham

1 THE COURT: Questions concerning his qualifications?

2 MR. MORIN: No, sir.

3 THE COURT: All right. You may continue.

4 MR. WILLINGHAM: Thank you, Your Honor.

5 Q If you would, tell the jury the bare bones of D. N. A.
6 analysis, what you do.

7 A Okay. D. N. A. stands for deoxyribonucleic acid. It's
8 present in virtually every cell in your body. It is a
9 chemical. It is a very complex chemical, and within that
10 chemical is in-coded information that determines who you
11 are.

12 It determines your physical characteristics and also
13 your internal characteristics. Hair color, eye color, your
14 weight and things like that have a lot of genetic
15 determinants.

16 Because it's different for every single person on the
17 planet, it is useful as a forensic tool. The only two
18 people that are going to share the same D. N. A. would be
19 identical twins. Everyone else's D. N. A. is different from
20 person to person.

21 So it's useful for forensics if we have biological
22 material, blood, semen, saliva, a piece of skin or something
23 that is left at a crime scene. We can take that material,
24 extract the D. N. A. from it and develop a D. N. A. print.
25 It's the spots in the D. N. A. that make us very different

Stephen J. Lambert
Direct examination by Mr. Willingham

1 from each other; and then compare it back to known standards
2 either from a victim or a suspect and determine ultimately
3 who that biological material came from.

4 Q And were you asked to perform D. N. A. analysis in this
5 case?

6 A Yes, I was.

7 Q I'm going to show you State's Exhibit Number 1.1 and
8 1.2. I will ask you. Did you perform D. N. A. analysis on
9 quantitative samples from those items?

10 A These items are indicated to have been analyzed by John
11 Ortuno in our laboratory. I didn't see these directly.
12 What he did was he extracted the D. N. A. from the swabs
13 that were found. This is indicated, swab from gun. He took
14 the sample, extracted the D. N. A. from that and turned the
15 D. N. A. over to me to perform the D. N. A. typing on.

16 Q And, now, those strands were analyzed.

17 A The D. N. A. from these items were analyzed, yes.

18 Q What were the results?

19 A The results from what's identified as State's Exhibit
20 1.1 and 1.2, which are swabs from a pistol, the Charter Arms
21 Bulldog .44 Caliber, the blood on that matched the blood
22 standard from Richard Moore. So, the D. N. A. type
23 developed from each one of those items matched the D. N. A.
24 type of Richard Moore.

25 Furthermore, the probability of selecting a random

Stephen J. Lambert
Direct examination by Mr. Willingham

1 person out of the population that would have that D. N. A.
2 type is about one out of every 15 trillion individuals. So,
3 it is a very rare D. N. A. type.

4 Q Okay. I show you State's Exhibits 3.1 and 3.2 and ask
5 if you received D. N. A. samples from those items to
6 analyze.

7 A I received extracted D. N. A. from each one of these
8 items. This is indicated to be a swab from an Industria
9 Argentina .45 caliber pistol, and developed D. N. A. prints
10 from both of those items.

11 3.1 was a matched -- Richard Moore. 3.2 didn't develop
12 a full print. The partial print that I got from that -- and
13 sometimes that's dependent on how much sample was swabbed.

14 If you've got a large stain, you're pretty confident
15 that you're going to get a result. If you've got a very
16 tiny stain, sometimes you only get a partial result.

17 But the partial result on that item 3.2 was consistent
18 with coming from Richard Moore.

19 Q Okay. As far as item 3.1, what's the likelihood or
20 probability of selecting another unrelated individual to
21 have that same D. N. A. profile?

22 A Again, it's one out of every 15 trillion individuals.

23 Q And the 3.1 did match.

24 A Yes. That's correct.

25 Q I show you State's Exhibits 83.1 and 83.2 and ask if

Stephen J. Lambert
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1 you received samples from those.

2 A Yes, I did. These are the swabs from a meat cleaver.
3 83.1 is from the blade; 83.2 is from the handle of the meat
4 cleaver.

5 Both of those samples, I was able to develop a D. N. A.
6 print from them. 83.1 from the blade matched Richard Moore.
7 From the handle, again, matched Richard Moore, but I didn't
8 get a complete D. N. A. print from that, so it was a partial
9 print.

10 But I did get a complete D. N. A. print from the swab
11 from the handle, and that matched Richard Moore with the
12 same frequency in the population.

13 Q Showing you State's Exhibits 94.1, 94.2 and 94.3, did
14 you receive samples from those?

15 A Yes, I did. These were some cuttings that were made
16 from some Levi jeans. I was able to on each one of these
17 items develop a D. N. A. print from the blood that was on
18 the jeans, and in each case that blood matched Richard
19 Moore.

20 Q So the blood on the jeans matched --

21 A That's correct.

22 Q -- the blood probability.

23 A Again, one out of every 15 trillion individuals, so
24 that was a full D. N. A. print.

25 Q Finally, I will show you State's 95.1 and 95.2 and ask

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1 if you received samples from those items.

2 A Yes, I did. And, again, the blood on those items --
3 this is a cutting from an Arrow shirt. From the blood on
4 each one of those items -- matched Richard Moore. And I was
5 able to get a complete D. N. A. print from each one of
6 those. One out of every 15 trillion individuals would be
7 expected to have that type.

8 Q Agent Lambert, how many people live in the United
9 States?

10 A About 260 million, somewhere in that range.

11 Q Agent Lambert, how many people are there in the world?

12 A Somewhere in the vicinity of about six billion
13 individuals.

14 Q Six billion?

15 A Billion.

16 Q So, in order to have another one in 15 trillion, how
17 many worlds would we have to have?

18 A That's approximately 2000 times the population of the
19 earth. So, it's a very rare D. N. A. print. It's found on
20 the blood on each one of these items, and it also matches
21 Richard Moore.

22 Q So one in 2000 worlds.

23 A Approximately, that's correct.

24 Q Would you answer any questions from the Court or from
25 defense attorney?

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. MORIN

4 Q Agent, you testified that only identical twins have the
5 same D. N. A., is that right?

6 A That's correct.

7 Q So, if we looked at a hundred percent of the D. N. A.
8 of identical twins, it would be all the same.

9 A There could be point mutations somewhere along that D.
10 N. A., but the vast majority of it is going to be the same.

11 Q So, what percentage of D. N. A. from Mr. Moore did you
12 look at?

13 A We looked at nine spots on the D. N. A. molecule. We
14 don't need to look at all of it, the reason being, there are
15 spots on it that make us very different from each other.
16 The vast majority of your D. N. A. for everybody in this
17 room is exactly the same since we are all human beings.

18 There is a portion of the D. N. A. that is very
19 different from person to person. We look at enough sites to
20 get an extremely number. Once we do that, we make the
21 match.

22 Q But, once again, what percentage? You didn't look at a
23 hundred percent of the D. N. A., did you?

24 A No.

25 Q And you didn't look at fifty percent, did you?

Stephen J. Lambert
Cross-examination by Mr. Morin

1 A No. A very minuscule percentage of the D. N. A. I
2 wouldn't know the percentage.

3 Q Less than one percent?

4 A Certainly.

5 Q Okay. Now, the D. N. A. that we have in our body,
6 you've already testified to, each strand or what have you
7 has a function, is that right? Like you testified that, you
8 know, the liver or your D. N. A. makes different -- makes us
9 human, right, and that's why a lot of it is the same?

10 A That's correct.

11 Q Okay. So the D. N. A. that you looked at, what does it
12 do? Does it determine eye color or hair color, or what does
13 it do?

14 A The D. N. A. that we looked at doesn't have a
15 particular function. It's just carried along, and it has
16 been termed to be junk D. N. A. And because it can be --
17 because it doesn't have a function, it can vary widely from
18 person to person. If you had huge variations in genes that
19 actually did something, then that's where you run into
20 genetic diseases.

21 Individuals who have mutations in D. N. A. like that
22 suffer great afflictions. This D. N. A. isn't held to that
23 same standard, so it can vary widely from person to person.
24 So, it doesn't have a function.

25 Q Okay. Now, when you -- you said you used nine. What

Stephen J. Lambert
Cross-examination by Mr. Morin

1 was the term? I don't want to --

2 A Loci or locations --

3 Q Okay.

4 A -- on the D. N. A. molecule.

5 Q Now, is it my understanding that SLED now does a test
6 that does 13 loci?

7 A Oh, when we did this test we had the possibility of
8 doing 13 loci. However, if we get a good match with nine,
9 and it is one in 15 trillion, it would just have been that
10 many more orders of magnitude rarer if we had done the other
11 four tests.

12 Q And that one in 15 trillion, if you had looked at the
13 tenth loci and it was -- it did match, that would mean the
14 other nine were just --

15 A Coincidental matches.

16 Q Coincidental.

17 A And the probability of a coincidental match is one out
18 of every 15 trillion people that you look at.

19 Q I see. Now, it wasn't too long ago that SLED was doing
20 a test that only lifted seven loci, isn't that right?

21 A That's correct.

22 Q And then you went to nine.

23 A That's correct.

24 Q And now you are at 13.

25 A Well, when we went to nine, we also had 13 available.

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Redirect examination by Mr. Willingham

1 We just don't need to go further than that for cost reasons,
2 for once we get to one in 15 trillion, there is no real
3 reason to go further beyond that.

4 Q Well, when you got to the seventh one, why didn't you
5 stop then?

6 A That was a completely different test. We were doing
7 what was term the R. F. L. P. test then. It was a different
8 technology?

9 Q From your examination from the work that you did, and
10 you testified that some of these swabs came from a shirt,
11 some came from one gun, two guns, a shirt, a meat cleaver
12 and a pair of pants.

13 A That's correct.

14 Q From your examination, can you tell me who owned those
15 items?

16 A No. I don't have that information, no.

17 MR. MORIN: That's all I have of this witness.

18 THE COURT: Redirect.

19 MR. WILLINGHAM: Very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WILLINGHAM

22 Q Agent Lambert, you said you also received some training
23 from the F. B. I.

24 A Yes.

25 Q And are you familiar with what identity statements are?

Stephen J. Lambert
Redirect examination by Mr. Willingham

1 A Yes.

2 Q What is that?

3 A The F. B. I. has a statement. When they have a number
4 of this rarity, of this magnitude, they will testify to the
5 fact that this particular item came from the suspect with a
6 degree of scientific certainty that the blood on these items
7 originated from that suspect. And this particular case
8 would fall under that description for their laboratory.

9 Q What's their threshold?

10 A 260 billion, so.

11 Q 260 billion?

12 A Or several orders of magnitude over their threshold.

13 Q And we have got 15 trillion.

14 A That's correct.

15 Q No other questions.

16 THE COURT: Recross.

17 MR. MORIN: No, sir.

18 THE COURT: Thank you, sir. You may step down, Agent
19 Lambert.

20 MR. WILLINGHAM: We ask he be excused, Your Honor.

21 THE COURT: Without objection, he is excused.

22 (Whereupon, the witness was excused.)

23 THE COURT: Next witness.

24 MR. GOWDY: May it please the Court, Your Honor, the
25 state would call Dr. David Wren.

Dr. John David Wren
Direct examination by Mr. Gowdy

1 DR. JOHN DAVID WREN, having been
2 first duly sworn, testified as follows:

3 THE COURT: Doctor, if you would, please state your
4 name for the record, and spell your last name, sir.

5 THE WITNESS: John David Wren, W-R-E-N.

6 DIRECT EXAMINATION BY MR. GOWDY

7 Q Good morning, Dr. Wren.

8 A Good morning.

9 Q Could you please tell the ladies and gentlemen of the
10 jury what you do for a living and how long you have been
11 doing it?

12 A I'm a physician with a specialty in pathology. I've
13 been a practicing physician, pathologist, in this town since
14 October the 18th, 1982.

15 Q What is your educational background, Dr. Wren?

16 A I have a bachelors, a masters and a doctor of
17 philosophy degree in chemical engineering from Clemson
18 University. I have a medical doctor's degree from the
19 Medical University of South Carolina.

20 I have a combined residency in anatomic and clinical
21 pathology at the Medical University of South Carolina. And
22 at the time I was there, I also did a special type of
23 residency in forensic pathology from -- began in, I think,
24 about September of 1980 and ran through January of 1983.

25 Q Dr. Wren, what is pathology?

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1 A Pathology is basically defined as a study of the
2 disease processes in the body. And pathology is concerned
3 with both anatomic and clinical pathology.

4 Anatomic pathology is that part of pathology that is
5 involved with studies of the tissues, whether it be
6 cytology, which is pap smears; or surgical pathology, which
7 is tissues removed at surgery; or autopsy pathology, which
8 is actually what everyone is familiar with, performing
9 autopsies. Those are the branches of anatomic pathology.

10 Then a clinical pathologist actually runs and
11 supervises the clinical laboratory and hospitals and
12 commercial laboratories, interprets results for physicians,
13 acts as a physician's consultant and also chooses and
14 supervises the purchase of equipment to run various blood
15 tests, basically, as well as microbiology and blood banking
16 in the laboratory.

17 Q How many autopsies have you conducted or performed in
18 your career?

19 A I average about 160 forensic autopsies a year since
20 about 1993. I've probably done close to 2000 forensic
21 autopsies and about a thousand hospital autopsies since I
22 started.

23 Q Dr. Wren, have you been qualified as an expert in the
24 field of forensic pathology and testified as such?

25 A Yes. I've been qualified all over the state beginning

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1 in about 1981 or '82 in counties including Horry County,
2 Charleston County, Georgetown, Orangeburg, Dorchester,
3 Clarendon, Laurens, Greenwood, Anderson, Greenville,
4 Spartanburg, Lancaster, Fairfield. And I could name some
5 more, I guess, if I had to go down through it.

6 Q I think that's enough, Doctor.

7 A As well as Union. I forgot about Union and Cherokee.

8 MR. GOWDY: Your Honor, we would move Dr. Wren in as an
9 expert in the field of forensic pathology.

10 MR. MORIN: No questions.

11 THE COURT: Thank you. You may continue.

12 Q Dr. Wren, did you perform an autopsy on a James Mahoney
13 in 1999?

14 A Yes. I performed an autopsy on an individual
15 identified as James Joseph Mahoney in the Spartanburg
16 Regional Hospital Autopsy Room on September the 16th, 1999.
17 I began that autopsy at approximately 10:00 a.m.

18 Q As a part of doing an autopsy on someone do you
19 determine their height and weight, or is that relevant to an
20 autopsy?

21 A Well, it is just -- it's part of the general
22 characteristics one takes. It is relevant only in the, I
23 guess, comparing that person with other persons that it
24 might be confused with and actually comparing them to the
25 assailant and things like that. But we measure their height

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1 supine. It can vary one to two inches from your premortem
2 height.

3 I measured this individual as 69 inches in length. And
4 we do not have a scale, so I estimated his weight as about
5 145 pounds. A normal individual, 5' 10" -- he was 5' 9" --
6 just of average build and average weight will weigh 150
7 pounds. So, I thought he was a little bit, about average
8 build, a little bit thin and one inch shorter than a 5' 10"
9 person.

10 Q When you perform -- when you perform autopsies in
11 general, what -- can you tell the ladies and gentlemen of
12 the jury what you're looking for? What is the purpose of
13 performing an autopsy?

14 A Well, a complete forensic autopsy entails a brief
15 history just to correlate what you find with that history
16 and actually to help point out things that may be
17 impertinent in the investigation.

18 We then describe the individual as we see them first.
19 We describe their clothing, any defects in the clothing, any
20 abnormalities in the clothing that may be pertinent, any
21 trace evidence that we may find. Then we undress the body.
22 We wash the body.

23 Prior to that we look for any trace evidence if it is
24 pertinent. We then describe the body completely, describe
25 any injuries. And then we do a complete internal

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1 examination with removal of the organs and dissection of the
2 organs to determine if there are any disease processes that
3 may have contributed or been involved with the death of the
4 individual.

5 Then we actually determine a cause of death. And from
6 the cause of death, you deduce, along with the history, the
7 manner of death.

8 The cause of death can be as simple as a gunshot wound
9 to the head, or it can be a -- in cases of people that die
10 naturally, it may be an involved process. But,
11 nevertheless, the cause of death is different from the
12 manner of death. There are five manners of death. Those
13 usually have to take some history to go along with them.

14 There is natural deaths, meaning that there was no --
15 that it was all natural processes.

16 There is a homicide, meaning that another person was
17 involved and contributed to the death.

18 Suicide, which everyone knows the definition of.

19 Accidental death.

20 And then undetermined, meaning that after a thorough
21 autopsy and investigation, five, or four to six percent of
22 the people that die, after a complete autopsy and
23 correlation, there may -- particularly in younger people,
24 there may be no manner of death. We may not know the actual
25 cause of death.

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1 A lot of people are familiar with SIDS death, which is
2 a sudden unexpected death in an infant that has certain
3 characteristics, but then there are also sudden unexpected
4 infant deaths that do not follow SIDS, and we sign them out
5 that way. And then there are sudden unexpected adult deaths
6 that we do not have an anatomic cause of death.

7 Q Were you able, Dr. Wren, to decide the manner of death
8 for James Mahoney?

9 A I did not assign the manner of death. That is left to
10 the coroner at his instructions. I can have an opinion. I
11 do not -- I do not, since this is not a medical-examiner
12 system, this is a coroner system in this state.

13 The pathologist determines the cause of death. And if
14 it is asked for, we will contribute to the manner of death,
15 but we leave it to the coroner's office. But the cause of
16 death in my opinion was internal hemorrhaging, cardiac
17 tamponade, meaning that there was blood around the heart,
18 and the hart could not beat properly, secondary to a gunshot
19 wound to the chest.

20 Q Dr. Wren, could I ask you to step from the witness
21 stand and show the ladies and gentlemen of the jury where
22 James Mahoney was shot? And use me as an exhibit, and tell
23 me how to turn.

24 (Whereupon, the witness left the stand.)

25 A Okay. Turn this way.

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1 He had an entrance gunshot wound in his side, left
2 flank near the armpit, is called an axilla.

3 And then if you draw an imaginary line from the front,
4 it is called an anterior axillary line. And then the
5 posterior is the posterior axillary line. And then right
6 down the middle is the mid axillary line.

7 It was -- the gunshot wound in his -- almost his mid
8 axillary line on the right -- the left side. And there was
9 an exit in his right chest. The entrance was measured as in
10 this -- how tall are you?

11 Q 5' 11".

12 A This guy was two inches shorter.

13 And everybody has different thoraxes and heads and
14 lengths and all.

15 But in this individual the gunshot wound, the entrance
16 was 21 and a half inches from the top of his head and five
17 and a half inches to the left of midline. We measured,
18 whichever side of the midline it is.

19 And in that area was a .38 inch diameter, 38 hundredths
20 of an inch diameter, defect present. It was almost round.
21 And it had some darkness around it and a good bit of
22 hemorrhage around it. I could not tell for sure if it was
23 contact, but there was clothing overlying it, so I'm not
24 sure it if was contact or not.

25 Usually the clothing splits or the skin splits if there

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1 is contact. There was no splitting, so it is more likely
2 that it was slightly away from the body.

3 It passed through the lower border of the eighth rib
4 and then went through the liver, through and through the
5 stomach, through and through the diaphragm, through and
6 through the heart and left lung. And it passed from the
7 body anteriorly near the midline on the right.

8 This one was 19.75 inches from the top of the head and
9 one and a quarter inches to the right of midline. This
10 wound was oval or slit like and it measured sixty hundredths
11 of an inch by 33 hundredths of an inch, and it had no
12 abrasion borders. It was a classic exit wound with tissue
13 protruding from that wound.

14 And, so if you drew an imaginary straight line from the
15 two, it was a bullet going left to right, slightly upward
16 and slightly forward in this individual. That was the
17 through-and-through gunshot wound.

18 Then he had another gunshot wound in his lower right
19 arm. It was -- could have been a reentry, because I could
20 pull that wound over his, the other one, and it was not a
21 nice, round distant wound. It was more of an irregular
22 wound, because as bullets pass through the body, they can
23 tumble as they go through -- as they drag through the
24 tissues that are uneven. And it could start tumbling as it
25 passes through the body. And it could have hit the arm

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1 sideways or at an angle.

2 But, nevertheless, it measured 41 hundredths by 35
3 one-hundredths of an inch in overall dimensions and did have
4 an irregular abrasion border from eight to two o'clock. If
5 you look at the arm as it's hanging vertically, if you
6 imagine from eight o'clock on the wound up until two
7 o'clock, that means on the outside. It was up to three
8 tenths of an inch in width.

9 And that bullet passed and broke the humerus, the bone
10 in the upper arm. And I recovered that bullet from the
11 area. It was a copper jacketed lead bullet. It had visible
12 lines and grooves, and it was distorted.

13 And I did have the measurements, and I labeled that
14 bullet five, which is the last number of the autopsy. This
15 autopsy was A-205, so I didn't write all of that, so I put a
16 five and a Delta, which is a symbol I use for a "D". It is
17 much easier to make a "D" for Delta. It is just like a
18 triangle. And I forwarded it to Sergeant Hugh Murphy of the
19 Spartanburg County Police Department. Those were the wounds
20 he had.

21 In summary, he had a through-and-through gunshot wound
22 to the chest, was his cause of death, the cause of the
23 hemothorax or hemoperitoneum and a hemopericardium, blood
24 into those, into his right plural cavity, into the heart and
25 into the abdominal cavity, and possibly that bullet passed

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1 into his arm. I could not tell. There was no way to tell
2 that, but it was either one or two gunshot wounds.

3 Q Doctor, in describing the distances from the top of the
4 head, did you testify that this wound, this entry wound, was
5 lower than the exit wound?

6 A Yes, sir. It was one and three quarters. It was just
7 one and three quarter inches lower than the other one, than
8 the exit.

9 So, it was going upward. That bullet was going upward
10 in the body as it passed through. That doesn't mean that
11 the -- that a 4' 2" person shot or was shooting up at him.
12 He could have been leaned over.

13 The body can be turned in all different directions, but
14 it does mean that the bullet passed upward. And it had to
15 pass -- the body had to be twisted in some way, because all
16 of the organs had went through -- not in a good straight
17 line, unless you twist the body down, because the heart lies
18 a little bit above the liver. The stomach, of course, is
19 below that. The way it passed through, it went through all
20 of them.

21 Q Would your opinion, Doctor, be that the body was turned
22 in an unusual or awkward way when it was shot?

23 A Well, I think it was turned slightly. I can't tell how
24 much, whether he was leaned over or one way or another. If
25 he was leaned over, yes, it -- he had to be leaned over -- I

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1 don't think you can tell.

2 Q Thank you.

3 (Whereupon, the witness returned to the stand.)

4 Q Do you have an opinion on what caliber projectile?

5 Now, you took a projectile out and turned it over to the
6 sheriff's department. Do you have an opinion based on your
7 experiences in forensic pathology whether it was a large
8 caliber or a small caliber projectile that killed
9 Mr. Mahoney?

10 A Well, I measure the base. I measure the three largest
11 dimensions, and it was .73 -- 7300 hundredths. And the
12 measurement in inches roughly correspond to the diameter,
13 the base of the bullet, and, therefore, to the caliber.

14 The smallest diameter I got was .40 inches, but this
15 bullet was distorted. So, it was definitely not a small
16 caliber. The small calibers are .22's and .25's. Medium
17 calibers run from .32's to .38's. And then the large
18 caliber is above that. So, it was a medium to large
19 caliber.

20 And I don't shoot guns. And I haven't studied a lot
21 about bullets, but I send it to SLED for them to determine
22 what calibers they are.

23 Q Doctor, if -- and I know it is not clear in your
24 report, but if he had been shot twice, is there any way to
25 tell which shot came first?

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1 A No. Well, if he was shot once, you could tell, but
2 twice, you couldn't, no.

3 Q Could either of the shoots, assuming he had been shot
4 twice, could either of them been fatal or only this shot
5 have been fatal?

6 A Well, in my summary I called one of them, one in the
7 summary of a final diagnosis. I felt like the one in his
8 side and chest, the one that went through him, is the fatal
9 one. But the other one is possibly fatal, because not only
10 could he have bled to death from it, maybe slowly, but he
11 could have, if he had survived, he could have gotten an
12 infection that could have caused his death eventually. And
13 that would still have been a potentially fatal or possibly
14 fatal one.

15 Q Dr. Wren, you testified relevant to the clothing and
16 imprint where the bullet entered.

17 A Yes.

18 Q Do you have an opinion on how close the weapon that
19 fired this projectile would have been to Mr. Mahoney?

20 A Well, I actually could not determine that there was any
21 soot on the garment. I could not actually find any in the
22 body, in the wound. And I wasn't sure that there was not
23 some, some stippling of the skin.

24 But after looking at the pictures again that we have, I
25 don't think that it was a contact wound. Now, it could have

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1 been close range, but I don't think it was contact.

2 Now, I guess I have to, have to describe and tell you
3 what those things mean. If you have a contact gunshot
4 wound, you can have a hard contact gunshot wound or a soft
5 contact gunshot wound.

6 If you can imagine taking a barrel of a weapon and
7 sticking it up against the skin, if there is something under
8 it like bone or the skin is stretched tight and it's pushed
9 up against it and actually indents the skin, all of the gas,
10 as well as the burning powder and the bullet, will pass from
11 the weapon, along with a fire that comes out -- will go into
12 the body through that wound.

13 If it's tight contact, as the bullet goes on and it's
14 up against -- if the barrel is up against something that's
15 firm, then the expanding gas has to, has to go somewhere.
16 And what it does is split the skin as it comes out around
17 the barrel.

18 You can't remove the barrel quick enough to keep that
19 from -- to make it come back out of the hole. So it will
20 tear the skin, and you will get splitting of the skin most
21 of the time when you have a hard contact, unless it is in a
22 real soft place. And you have a cavity beneath there where
23 the gas can go. So that's tight contact.

24 If you have a loose contact one, sometimes it will not
25 split the skin, and it will come back around where the

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1 barrel is. But in both of those cases you will -- if the
2 barrel is up against the skin, you will usually get charring
3 because the barrel end becomes hot, and it will actually
4 burn around there.

5 It depends on how big the barrel is, but in some cases
6 you can even see the site on the weapon burn the skin, and
7 you will have a reverse imprint of the barrel of the gun.

8 Now, as you move the barrel back from loose contact for
9 a certain distance, as those gases come out and the burning
10 powder comes out, the gas will have soot in it, and it will
11 actually deposit soot around that wound. And the burning
12 powder will actually tattoo the skin with little burn marks.
13 That's called tattooing or stippling.

14 It depends on the caliber of the weapon, but one can
15 tell by taking a weapon and firing it at a white piece of
16 paper and start from contact, and back off. You can see the
17 powder, I mean, the soot deposit. And eventually as you
18 move back far enough, that soot will not reach the surface,
19 so what it's passing from, and it won't be any deposit.

20 So that comes from hard contact, to loose contact, to
21 intermediate range when you can see some effects, whether it
22 be soot or burning powder tattooing the skin. And for the
23 handguns, usually that distance ranges from right up against
24 the body but not touching the body back to 12 to 15 inches.
25 And those are called intermediate gunshot wounds.